retraining programs for scientists, engineers, technicians, and others involved in civilian R. & D.;

Third, that the Department of Commerce through the Economic Development Administration sponsor conversion retraining programs for management personnel in defense-related R. & D.;

Fourth, that the Small Business Administration assist small business firms in achieving conversion by providing technical grants, loan guarantees, and interest assistance payments; and

Fifth, that an advisory committee of industrialists, scientists, and educators be established to help shape and guide these programs.

Defense cutbacks have posed a particular problem for many residents of Prince Georges and Charles Counties because we have such a high percentage of Department of Defense employees and technicians employed by defense and space contractors.

This bill seeks to encourage scientists, engineers, and technicians to help solve domestic problems in such areas as health, housing, transportation, crime, and pollution. I am sure that this legislation will have a tremendous impact on those employees who have been layed off or "riffed" as a result of defense cutbacks.

SENATE—*Tuesday, September 22, 1970*

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. RUSSELL).

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

O Thou who are from everlasting to everlasting, whose spirit broods over Thy creation in every generation, break in upon our troubled age that men and nations may heed the divine imperative to "do justly, love mercy, and walk humbly with Thy God." We pray that in the midst of the world's crisis and confusions, its fears and frustrations, its sorrows and sufferings we may hear and heed Thy clear call guiding us to be faithful and fearless, strong and steadfast, patient and persevering under Thy sovereign grace and wisdom.

May the stern and cruel arbitrament of bomb and tank give way to peaceful adjudication, cooperation, and mutual good will.

We pray for those who bear the burdens of battle, for those who suffer from war everywhere, and especially for our own sons—prisoners of war—in distant lands. Grant them healing in sickness, courage in deprivation, and the constant awareness of Thy sustaining presence. Be with all who are dear to them that by drawing near to Thee they may be nearer to one another. Give us grace to share their burden and wisdom to labor with increased zeal for the coming peace.

In the Redeemer's name we pray. Amen.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations received today, see the end of Senate proceedings.)

THE JOURNAL

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

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

MR. AND MRS. ARVEL GLINZ

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1216, S. 1074.

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

The assistant legislative clerk read as follows: S. 1074, for the relief of Mr. and Mrs. Arvel Glinz.

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

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

S. 1074

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of the money in the Treasury not otherwise appropriated, to Mr. and Mrs. Arvel Glinz of Eldridge, North Dakota, the sum of $3,521.26, in full satisfaction of all claims against the United States for reimbursement for legal expenses paid by the said Mr. and Mrs. Arvel Glinz from March 13, 1961, through April 1, 1966, in defending the title of real property transferred to them by a receiver's deed, dated March 25, 1960, such property having been bought by the said Mr. and Mrs. Arvel Glinz at a judicial sale which was held to satisfy tax liens of the United States: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1199), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay to Mr. and Mrs. Arvel Glinz the sum of $3,521.26 in full satisfaction of all claims against the United States for reimbursement for legal expenses paid by the claimants from March 13, 1961, through April 1, 1966, in defending the title of real property transferred to them by a receiver's deed, dated March 25, 1960, such property having been bought by the claimants at a judicial sale which was held to satisfy tax liens of the United States.

STATEMENT

In 1958 the Federal Government filed a suit against Fay Heasley to collect Federal income taxes of approximately $200,000 by foreclosing tax liens against a large farm owned by Mr. Heasley. In this suit, a judgment was entered for the Government, and Mr. Anderberg was appointed receiver by the Federal district court at Fargo, N. Dak., for the purpose of selling this farm at a judicial sale. Mr. Heasley's farm was sold by the receiver to the highest bidder who was Mr. Arvel Glinz. The Federal district court in Fargo, N. Dak., confirmed this sale and the Court of Appeals for the Eighth Circuit upheld the sale to Mr. Glinz.

Thereafter, Mr. Fay Heasley initiated a series of suits in State and Federal courts which were repetitious and were designed to harass and embarrass Mr. Glinz in his purchase of the farm. Many of these suits were initially directed solely against Mr. Glinz in an effort to deprive him of his purchase. Such suits necessarily occasioned legal expense to Mr. Glinz, but such legal expense was private in nature as it was for the purpose of proving title in himself. Eventually, the Government, or a Government employee, was named a defendant in all of the suits. Whenever both the Government and Mr. Glinz appeared as codefendants in one of these suits, the Government undertook to defend the suit, to the mutual benefit of the United States and Mr. Glinz, thereby relieving Mr. Glinz of any additional expense. However, the Government did not and could not pay those expenses incurred by Mr. Glinz in the hiring of his personal attorney as that attorney only represented and advised Mr. Glinz.

In a letter to the Honorable Quentin N. Burdick, the Assistant Attorney General stated as follows:

"It is these legal fees which Mr. Glinz incurred for his private benefit which are the subject of the private bill proposed by Mr. Anderberg. It is self-evident, from the foregoing factual summary, that such private legal expenses cannot be paid by the Government. It should be pointed out that the Department of Justice has, in the past, been quick to intervene and assume the burden of any litigation in such matters where it could justifiably do so in the interest of protecting purchasers at Government tax foreclosures sales."

A copy of the letter of the Assistant Attorney General is attached hereto and made a part hereof. Also attached is a letter from Henry W. Anderberg to Senator Burdick which sets forth further facts in relation to this matter. The Anderberg letter also relates

quite a number of court proceedings that are involved in this matter. These proceedings indicate the harassment to Mr. Glinz by Mr. Heasley. This situation is further documented by a letter which is hereto attached from Mr. Robert Vogel to Mr. Anderberg, Mr. Vogel being the U.S. Attorney for the District of North Dakota from 1954 to 1969. A further letter to Senator Burdick from Herman Weiss who was counsel for the receiver, Mr. H. W. Anderberg, is also attached hereto and made a part hereof. A letter from the Department of the Treasury which defers to the Department of Justice as to the merits of this matter is also attached.

A review of the foregoing shows that Mr. Glinz bought this property at a judicial sale by the U.S. Government when the Government sold the Heasley property in order to recover owed income taxes. Therefore, the Government was the primary seller of the land and insofar as this matter is concerned was an interested party from the very beginning.

The committee agrees with the statement of the Assistant Attorney General that legally no reimbursement can be made for the expenses incurred by Mr. Glinz and the file further shows that when able to do so the Government did enter the suit and carry the burden from that time on.

The committee believes that even though the Government is not legally liable for the expenses incurred by Mr. Glinz that in an equitable and moral way a liability does exist. The harassment that Mr. Glinz was subjected to arising out of the Government judicial sale is of course neither the Government's fault nor Mr. Glinz' fault. However, Mr. Glinz had to bear the burden of this harassment.

It appears to the committee that this condition of the facts makes the bill one which should be the subject of congressional relief, and that the Government should aid Mr. Glinz in this respect. Had the Government been able to intervene in the first instance, the Government would have assumed the liability incurred by Mr. Glinz. The committee, therefore, believes that the proposed legislation is meritorious and recommends favorable consideration of S. 1074.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Small Business of the Committee on Banking and Currency, the Committee on Commerce, the Committee on Foreign Relations, and the Subcommittee on Military Construction of the Committee on Armed Services be authorized to meet during the session of the Senate today.

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

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Idaho (Mr. CHURCH) is now recognized for 20 minutes.

Mr. MANSFIELD. Mr. President, will the Senator from Idaho yield to me so that I may proceed for not to exceed 10 minutes, without taking any of his time?

Mr. CHURCH. I am happy to yield to the majority leader for that purpose.

The PRESIDENT pro tempore. The Senator from Montana is recognized for 10 minutes.

S. 4371—INTRODUCTION OF A BILL TO ABOLISH THE INTERSTATE COMMERCE COMMISSION

Mr. MANSFIELD. Mr. President, in recent weeks, I have addressed myself to the problem of our regulatory agencies, more specifically, the Interstate Commerce Commission.

It has not been easy to recommend that the duties of the Interstate Commerce Commission be abolished, but after giving the matter considerable thought and investigation, I am firmly convinced that the consumers, the shippers, and the transportation industry can best be served by abolishing the ICC and transferring the essential duties of the Commission to another department or agency of the Federal Government.

After repeated visits to Montana, I find that the interests of my constituents are not being served by the Interstate Commerce Commission. More and more the Commission is becoming industry oriented, and exhibiting a lack of initiative and imagination in its decisions and policies.

In Montana recent railroad consolidations have given little evidence that there is any improvement in service, and, in fact, there is likely to be a reduction. Repeated efforts are being made to discontinue passenger service, and there are indications of a reduction in freight service in the less populated areas.

In Montana the history of the railroad service to the public has been on a steady decline. Beginning with the abandonment of the Milwaukee Railroad's passenger train service through the State of Montana some years ago, there have been repeated efforts on the part of the other railroads to reduce and abandon service. Several efforts have been made to obtain ICC approval with the abandonment of the Mainstreeter on the Northern Pacific Railroad lines through Montana. To date, the people in Montana have been successful in keeping this service.

How much longer this will last, we do not know. Passenger service between Billings, Mont., and Denver and between Billings and Nebraska has been abandoned. Just recently, the ICC has granted a 6-month delay in the abandonment of passenger service between Butte, Mont., and Salt Lake City. This will leave this area without adequate public surface transportation.

Within the State of Montana, the railroads have started implementing a plan of complete abandonment of rail service such as that provided between Livingston and Gardiner and between Sappington and Norris. To date, these requests have been denied by the Commission. Now, there are new indications that the railroads intend to retreat further and cutback freight services to some small, isolated communities in Montana. Constituents from Circle, Brockway, and Lindsay have been informally advised that their daily freight service will be cut back to three times a week. The problems of our rural communities are serious enough without these additional cutbacks. As I have indicated on previous occasions, I fear that Montana is rapidly becoming merely a roadbed for transcontinental rail freight service between the Twin Cities and the west coast.

As my colleagues in the Senate know, I expressed my most adamant objection to the recent request for rate increases submitted by the railroads, Eastern, Western, and Southern. The 15 percent is an exhorbitant and thoroughly unreasonable request, especially in view of the rate boosts already approved by the ICC. While the Commission has refused to implement the increases until after their hearing, the previous record of such requests would give me no comfort as to the final recommendations.

I noted on yesterday that the railroads had again applied for a 15 percent increase which would be on top of the 11 percent increase granted in two segments over the past 6 months. There are no indications that the boxcar shortage has been resolved; both the grain and lumber industries are continuing to express concern about shortages. Interestingly, there are some reports that several of the large railroad companies would like to get out of the railroad business and concentrate on some of their many other investments. Whether or not this is true, it would seem so—with their continued abandonment of services to the people and lack of imaginative thinking in methods to expand and improve the railroad industry.

Insofar as the freight rate issue is concerned, the Wall Street Journal contained interesting comments suggesting that the government modernize its rail labor policy as well as its regulatory setup. It also offered the thought that the railroads themselves may need to give a little more thought to the possibility that they are pricing their services out of the market. Perhaps this is exactly what the railroads want to do.

Mr. President, I ask unanimous consent that the editorial appearing in the September 14, 1970, issue of the Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, Sept. 14, 1970]

THE INTEREST IN FREIGHT RATES

In denying the Eastern and Western railroads a 15% increase in freight rates, the Interstate Commerce Commission stressed the interests of shippers and consumers. Those interests surely must be considered, but the rate question also must be pondered from the railroads' viewpoint.

An article elsewhere on this page traces the history of railroad financial problems, some of which are arising once again. Certainly the roads could use some more income from somewhere. But it is at least doubtful that interest will be served, for very well or for very long, by a long series of sizable rate boosts.

Although the ICC's language may appear to imply otherwise, the railroads have no transportation monopoly. They've received five general freight boosts since 1967, including a recent 5% interim increase, and the trend obviously has diverted some shipments to trucks, particularly to company-owned fleets.

The railroads soon will face sharply higher wage costs, as the result of labor negotiations now going on. However, as the Southern railroads pointed out when they refused to go along with the latest rate-boost request, no one can say now exactly how much higher the new labor costs will be.

In the circumstances the Southern roads are seeking a 6% interim increase in November; they plan to ask for a permanent boost only on a selective basis taking account of cost and competitive factors. Although many Eastern and Western roads are in much worse shape than the Southern lines, and thus less able to wait, the Southern strategy is at least realistic.

The railroads' troubles plainly can't be ended by diverting traffic to trucks. In the short run at least some of the lines probably can't survive without substantial Federal financial help.

In the long run Congress must modernize Federal rail labor policy; the President's proposals for dealing with the incessant, and costly, strikes now are gathering dust in Congress. The Government also must modernize the regulatory setup that now requires railroads to spend about as much time battling bureaucracy as they do fighting competitors.

The problems have piled up over many years, and they won't be disentangled overnight. In the meantime the railroads themselves may need to give a little more thought to the possibility that they are pricing their service out of the market.

Mr. MANSFIELD. Mr. President, my earlier proposal for abolishing the ICC has generated a great deal of interest. I might add that I have had comments and inquiries from many diversified points of interest. There is a need for a modernization of our Federal regulatory setup, and I firmly believe the ICC is the place to begin.

Today I introduce legislation calling for the abolishment of the Interstate Commerce Commission at the end of 18 months. During the first 12 months a special commission would be set up to determine how best to reassign the necessary functions of the ICC to other Federal departments or agencies. The remaining 6 months would be available for legislative action to accomplish the recommendations of the special commission.

The commission would be made up of representatives of the executive branch, the two Houses of Congress, and members from the private sector, representing the consumer, the carrier, and the shipper. I know that the Senate Commerce Committee has a great many crucial issues before it. We are now in the rush toward adjournment, but I do believe this is a matter of significant importance. I hope that the commitee will be able to give this legislation early and prompt consideration not later than the beginning of the next Congress at the latest.

Mr. President, I ask unanimous consent that a copy of the bill which I have introduced today seeking to bring about an abolition of the ICC be printed in the RECORD.

The PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 4371) to abolish the Interstate Commerce Commission at a future date and to establish a commission to make recommendations with respect to carrying out the functions of the Interstate Commerce Commission after such date, introduced by Mr. MANSFIELD, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 4371

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

ABOLISHMENT OF INTERSTATE COMMERCE COMMISSION

SECTION 1. Effective eighteen months after the date of enactment of this Act the Interstate Commerce Commission is abolished.

ESTABLISHMENT OF COMMISSION TO MAKE RECOMMENDATIONS

SEC. 2. (a) There is hereby established a National Commission on Transportation Regulation (hereinafter referred to as the "Commission") which shall be composed of fifteen members appointed as follows:

(1) six appointed by the President of the Senate, three from the membership of the Senate, two from the majority party and one from the minority party, and one each to represent carriers subject to regulation pursuant to the Interstate Commerce Act, shippers regularly using such carriers, and consumers generally;

(2) six appointed by the Speaker of the House, three from the membership of the House of Representatives, two from the majority party and one from the minority party, and one each to represent carriers subject to regulation pursuant to the Interstate Commerce Act, shippers regularly using such carriers, and consumers generally; and

(3) three appointed by the President to represent the executive branch of the Government.

(b) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment. The Commission shall elect a Chairman and a Vice Chairman from among its members. Eight members of the Commission shall constitute a quorum.

(c) The Commission shall make a full and complete investigation and study for the purpose of determining and making recommendations with respect to (1) what should be done with the functions of the Interstate Commerce Commission after the abolishment of such Commission pursuant to section 1 of this Act, and (2) what other actions should be taken to best carry out the national transportation policy as set forth in the Interstate Commerce Act.

(d) The Commission shall submit to the President and to the Congress a report with respect to its findings and recommendations not later than one year after the Commission has been fully organized.

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

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

(g) Subject to such rules and regulations as may be adopted by the Commission, the Chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 58 of such title relating to classification and General Schedule pay rates, shall have the power—

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

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

(h) (1) Any member of the Commission who is appointed from the executive or legislative branch of the Government shall serve without compensation in addition to that received in his regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of duties vested in the Commission.

(2) Members of the Commission, other than those referred to in paragraph (1), shall receive compensation at the rate of $100 per day for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission.

(i) There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this section.

(j) The Commission shall cease to exist ninety days after the submission of its report.

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

Mr. MANSFIELD. I yield.

Mr. CHURCH. Mr. President, I commend the Senator from Montana for the bill he has offered today. As the Senator knows, I share completely with him the deep concern he has expressed regarding both the deteriorating passenger service furnished by the railroads as well as the chronic shortage of freight cars available to the Western States.

I also share the belief that the ICC has failed to discharge its responsibility to the people of the American West.

I would be honored if the Senator would permit me to join with him as a cosponsor of the bill he has introduced.

Mr. MANSFIELD. Mr. President, I would be delighted. I would expect and anticipate that all Senators, regardless of party, between the Great Lakes and the west coast would be interested in this measure, because all of us, including the chairman of the Committee on Commerce, the distinguished senior Senator from Washington (Mr. MAGNUSON), have suffered greatly from the decisions of the ICC, especially in regard to the matter of freight rates which keep industry out of Montana, Idaho, and other Western States, and the matter of the shortage of the boxcars which has a serious effect on the economy in the rural areas.

Mr. President, I ask unanimous consent that the name of the Senator from Idaho (Mr. CHURCH) be added as a cosponsor of the bill I have just introduced.

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

COMMITTEE MEETINGS DURING THE SESSION OF THE SENATE TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs, the Committee on Finance, and the Committee on the Judiciary be authorized to meet during the session of the Senate today.

Mr. BAYH. Mr. President, I reserve the right to object, and although the Senator from Indiana does not intend to object. However, I want the record to show, so that the Senate will be on notice, that this is the last day the Senator from Indiana will permit committees to meet to the detriment of the efforts being made on the floor of the Senate.

The Senator from Indiana does not want to be overbearing or to cause inconvenience to his colleagues in the Senate. But in the opinion of the Senator from Indiana there are those in this body who are intent on preventing us from reaching a vote on a very important matter that is pending before the Senate. And if they insist on using the argument—or, in the opinion of the Senator from Indiana, the subterfuge—that they do not have enough time to study or debate the matter, the Senator from Indiana will put that argument to the test. I propose to see that this matter is studied and debated until we have had a chance to vote on it.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

SENATE RESOLUTION 469—SUBMISSION OF A RESOLUTION RELATING TO THE UNITED STATES-SPANISH BASE AGREEMENT

The PRESIDENT pro tempore. The Senator from Idaho is recognized.

Mr. CHURCH. Mr. President, I am submitting today a resolution dealing with the recently renewed base agreement between the United States and Spain. The resolution would express the sense of the Senate that nothing in this agreement shall be construed as a national commitment by the United States to defend Spain.

On August 6, 1970, as Senators know, Secretary of State William P. Rogers and the Spanish Foreign Minister Sr. Lopez Bravo an executive agreement entitled an "Agreement of Friendship and Cooperation between the United States and Spain."

Before the signing, the Senate's Committee on Foreign Relations had requested that this executive agreement be submitted to the Senate for approval as a treaty, following the traditional advice and consent procedure. The suggestion, however, was rejected by the administration.

I have told previously the story of a "double event"—vide, CONGRESSIONAL RECORD of August 25, 1970, pages 29902–29918—which occurred in the two countries prior to the signing. Ironically, in both Madrid and Washington, attempts were made to publicly examine the impending agreement before it became binding, but these efforts were ignored.

Following the signing, the Senate Foreign Relations Committee still felt that the terms of the Agreement needed to be clarified in public. Accordingly, the committee pressed the State Department for hearings, and these were agreed to. On August 26, 1970, Under Secretary of State Alexis Johnson and Deputy Secretary of Defense David Packard appeared before the committee, in both public and executive sessions, to explain—perhaps "translate" would be a better term—the scope and intent of the agreement.

Under Secretary of State Johnson declared, in his prepared statement, that the United States has made no commitment, secret or otherwise, pledging us to the defense of Spain. With reference to the agreement's preamble to the effect that both Governments "will make compatible their respective defense policies," and in regard to a phrase in article 30 of the agreement which states that "each Government will support the defense system of the other," Mr. Johnson emphasized that these phrases "cannot reasonably be interpreted as entailing any defense commitment" on the part of the United States toward Spain.

The Under Secretary said:

Our undertaking to provide military assistance is, in accordance with the words of the agreement, "conditioned by the priorities and limitations created by the international commitments of the United States." This language alone should make it clear that our Agreement with Spain does not embody any commitment; if the Agreement with Spain were regarded as a commitment, this phrase would have read "created by the other international commitments of the United States," and it does not read that way.

Mr. Johnson explicitly affirmed that the United States has given no secret pledge to defend Spain from external adversaries and has assumed "absolutely no obligation" to defend the Franco government from insurrection or rebellion from within.

Mr. President, I ask unanimous consent that the full text of Under Secretary of State Johnson's prepared remarks be printed in the RECORD at this point.

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

STATEMENT OF ALEXIS JOHNSON

At the outset of this hearing I would like to insert in the record the joint statement issued by Secretary Rogers and the Spanish Foreign Minister on August 6. I would also like to insert the statement I submitted to this Committee the same day in amplification of previous testimony before this Committee on the reasons the Administration entered into an Agreement of Friendship and Cooperation with the Government of Spain, and why it was felt that this should be done in the form of an Executive agreement. As you know, this was furnished to the Committee at the time of the signing of the Agreement but I would now like to submit it for the public record of this hearing.

The new Agreement with Spain forms a broad basis for fruitful cooperation with the Spanish people in the decade of the 1970's. It takes into account the many non-military fields in which both countries now have a close mutual interest and establishes a foundation for combined efforts in other such fields in future years. Such areas include science, cultural exchange, pollution control, urban problems, and especially education. The field of education is expected to assume particular importance with the adoption of an extensive educational reform program by the Government of Spain. It is expected that a substantial portion of the $3 million already committed by the United States to non-military uses under the new Agreement will be applied to assisting this program.

So far as the military chapter of the new Agreement is concerned, the arrangements are basically a continuation of rights we have enjoyed in Spain since 1953, when the first base agreement was concluded with the concurrence of the Senate leaders, including the leaders of the Foreign Relations Committee.

There have been differences of views as to whether the new Agreement should have been concluded as a treaty, subject to approval by the Senate, rather than as an Executive agreement, as had been done by administrations of both parties since 1953. The Administration's position on this issue was set forth in the statement I submitted to this Committee on August 6. The Administration believes that the treaty form was not appropriate to the relationship we have undertaken with respect to Spain.

With the exception of this question of form, I have noted little criticism or comment with respect to the substance of the new Agreement with Spain. Certainly I know of none regarding the non-military provisions for educational, scientific and cultural cooperation and the like. The only questions I have noted have been whether or not the United States has entered into a commitment to defend Spain, and whether or not there is a secret agreement restricting United States use of the bases in Spain. I appreciate this opportunity to deal with these two questions.

It has been intimated in articles appearing in the press in the last several weeks that the new Agreement of Friendship and Cooperation signed with Spain on August 6 somehow embodies an obligation or commitment on the part of the United States to come to the defense of Spain. The text of the Agreement has been available to this Committee since my appearance on July 24, and it has now been three weeks since the text was made public. The only specific parts of it which, however, seem to have been cited are two phrases: One in the preamble stating that under stated conditions both Governments "will make compatible their respective defense policies", and a phrase in Article 30 to the effect that "each Government will support the defense system of the other."

A reading of Chapter VIII of the Agreement, which is the chapter regarding defense matters, clearly shows that these phrases have been reported out of context and in fact cannot reasonably be interpreted as entailing any defense commitment. The first phrase actually appears as a part of the following sentence:

"Consequently, both Governments, within the framework of their constitutional processes, and to the extent feasible and appropriate, will make compatible their respective defense policies in areas of mutual interest, and will grant each other reciprocal defense support as follows:"

Thus, the undertaking to make respective defense policies compatible is restricted in three ways:

1. It applies only to areas of mutual interest;

2. It is expressly limited by the constitutional processes of both countries;

3. It is applicable only where "feasible and appropriate". In addition, I must emphasize

that the undertaking is restricted to making defense policies in these areas compatible and does not require their integration, joint defense planning, joint exercises or anything of this nature.

This preambular language is immediately followed by Article 30, the source of the second phrase in question. Article 30 in its entirety reads as follows:

"Each Government will support the defense system of the other and make such contributions as are deemed necessary and appropriate to achieve the greatest possible effectiveness of those systems to meet possible contingencies, subject to the terms and conditions set forth hereinafter."

It is to be noted particularly that the support in question is limited to that required physically to prepare the military organizations of Spain and the United States to "meet possible contingencies" with which they might respectively be faced, and is expressly subject to the subsequent explicit terms and conditions.

The terms and conditions, apart from technical regulations regarding supplies, discipline of military personnel, taxes, etc., simply are to the effect that the United States is granted the use of military facilities in Spain and that in turn the United States will contribute to the modernization of Spanish defense industries and grant Spain military assistance in accordance with the existing Military Defense Assistance agreement of 1953. Thus, Article 31 provides as follows:

"The Government of the United States agrees to support Spanish defense efforts, as necessary and appropriate, by contributing to the modernization of Spanish defense industries, as well as granting military assistance to Spain, in accordance with applicable agreements. This support will be conditioned by the priorities and limitations created by the international commitments of the United States and the exigencies of the international situation and will be subject to the appropriation of funds by the Congress, whenever the case so requires, and to United States legislation."

Again, it is to be noted that this "support [of] Spanish defense efforts" is limited in the following ways:

1. It is to be given only "as necessary and appropriate";

2. It consists only of "modernization of Spanish defense industries" and "granting military assistance to Spain";

3. It is expressly subject to appropriation of funds by Congress, and, where necessary, legislative authorization.

Finally—and this directly touches the question of commitment—our undertaking to provide military assistance is "conditioned by the priorities and limitations created by the international *commitments* of the United States." This language alone should make it clear that our Agreement with Spain does not embody any commitment; if the Agreement with Spain were regarded as a commitment, this phrase would have read "created by the *other* international commitments of the United States." This is a repetition of the language of the original 1953 Defense Agreement, which I do not believe has ever been characterized as a defense commitment.

Article 32, of course, basically provides that Spain "will authorize the Government of the United States to use and maintain for military purposes certain facilities in Spanish military defense installations agreed upon by the two Governments."

Other provisions of this Agreement indirectly make it clear that there cannot be any defense commitment on the part of the United States with respect to Spain. For example, the United States is not obligated by this Agreement to keep any military forces in Spain whatsoever. While it is contemplated by the Administration that we will retain some forces in Spain throughout the five-year term of the Agreement, if at any time we should change our minds there is nothing in the Agreement to prevent the removal of all forces and military facilities from Spain forthwith. In this connection Article 33, paragraph (c) provides that "The Government of the United States may remove at any time non-permanent constructions installed at its expense, as well as its personnel, property, equipment and materiel." In case any substantial removal is contemplated during the term of the Agreement it, of course, would be the subject of consultations with Spain, but we do not require the agreement of Spain in order to carry out any such removal.

There has been some discussion of the fact that in negotiating this Agreement we omitted any reference to the 1963 Joint Declaration, a document which in the past had been characterized by some members of this Committee as constituting a commitment. The position of this Administration has been that the Joint Declaration, adopted during the Kennedy Administration, did not constitute a defense commitment. That remains our position.

Nonetheless, out of deference to the express wishes of this Committee, and so that the question of a commitment would not arise in the future, I rigorously opposed the inclusion in the new Agreement of the 1963 Joint Declaration or any language reminiscent of it. We were successful in maintaining this principle and the 1963 Joint Declaration will terminate on the entry into force of this new Agreement on September 26. Thus, even that language which in the past has given rise to speculation about a commitment now disappears. I emphasize that this was done not because of any concern on the part of the Administration that the Declaration constituted a commitment, but rather out of respect for the wishes of this Committee.

Despite the fact that this Agreement has now been public for almost three weeks and has been subject to the scrutiny of this Committee for about a month, no one has asserted, and I fail to see how one could assert, that there is any language in the new Agreement which in any way echos defense commitment language in our various multilateral and bilateral mutual security treaties.

There has been public speculation that there might be a "secret annex" to the Agreement or some other classified document which either embodies a defense commitment on the part of the United States or in some way specifically restricts our use of the bases in Spain. Such speculation is totally unfounded. In connection with the signing of the Agreement there was one exchange of confidential classified notes, which we took the initiative to make available to this Committee on the day of signing, and which is restricted entirely to a recitation of details of numbers of troops permitted to be stationed in Spain, specific locations and identity of classified defense facilities, and details of the material to be made available to Spain. This is basically technical and detailed military information, which cannot be published without affecting military security. It does not expand on, amplify, or modify any principles contained in the basic Agreement of Friendship and Cooperation. As you know from the copies you have received, it does not contain any language regarding United States defense of Spain or governing the use of the bases.

All of the basic conditions regarding our use of these military facilities in Spain are contained in the published Agreement. These appear principally in Article 33, paragraph (e), and Article 34.

Article 33, paragraph (e) provides as follows:

"In normal circumstances any substantial increase in the personnel or military equipment of the United States in Spain, or any substantial increase in the use by the United States of facilities in Spanish military installations regulated by this Agreement, will be the subject of prior consultation in the Joint Committee and agreed upon between the two Governments through diplomatic channels."

This means that increases in personnel or military equipment of the United States in Spain or increases of our use of military facilities in Spain beyond levels authorized in the exchange of notes must be agreed upon between the two Governments. This simply reflects an understanding that there is not to be any sudden substantial expansion of our military presence in Spain without the consent of the Spanish Government.

Article 34, which is the most important provision on the use of the bases, provides as follows:

"In the case of external threat or attack against the security of the West, the time and manner of the use by the United States of the facilities referred to in this Chapter to meet such threat or attack will be the subject of urgent consultations between the two Governments, and will be resolved by mutual agreement in light of the situation created. Such urgent consultations shall take place in the Joint Committee, but when the imminence of the danger so requires, the two Governments will establish direct contact in order to resolve the matter jointly. Each Government retains, however, the inherent right of self-defense."

This simply means that in Spain, as in every other country where we have military facilities, our use of them must take into account the views of the host government. Nothing more explicit or definite than this has been agreed to between the two countries.

These are the principal questions which I believe have been raised, either by members of this Committee or in the press, in the weeks surrounding the signature of the new Agreement with Spain. If the Committee has additional questions Secretary Packard and I will do our best to answer them.

Mr. CHURCH. Mr. President, the Deputy Secretary of Defense gave corroborating testimony, saying that the agreement pledged us only "to defend U.S. forces if they are attacked." In any other circumstances, according to Mr. Packard, the agreement commits the President to no course of action to be taken without congressional consent.

There were two reasons given to explain why the administration concluded it was not necessary to submit the new agreement as a treaty to the Senate. First, according to the witnesses, the consent of congressional leaders had been obtained in 1953, including certain members of the Senate Foreign Relations Committee, to handle the original base agreement with Spain by means of an executive agreement. Second, Mr. Johnson testified:

> The Administration did not consider the new Agreement a commitment to Spain of the kind which called for Senate approval.

He argued that—

> To submit it for ratification as though it did constitute a commitment would, in fact, carry with it an implication of a commitment that we did not desire it to have.

During the hearing, I inquired of Under Secretary Johnson about the 10,000 or more American military personnel stationed on Spanish soil, and whether or not their very presence did not make for a tacit "commitment" to defend Spain. I ask unanimous consent that the

transcript of that exchange be printed in the RECORD at this point.

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

PRESENCE OF AMERICAN TROOPS AS A SECURITY GUARANTEE

Senator CHURCH. I press this because in November of 1968, coming back again to Spain, General Wheeler, in a meeting in Madrid with high Spanish military officials, discussing defense arrangements with the United States, said that the presence of American Armed Forces in Spain constitutes a more significant security guarantee to Spain than would a written agreement. How would you interpret that statement?

Mr. JOHNSON. If I recall rightly, Senator, I think that Under Secretary Richardson first, and myself second, testified at some length, was it not, in March of 1969 on that and the other statements and issues that came up at that time.

I can only say that it is an expression of General Wheeler's. It was not an expression of the U.S. Government.

Mr. CHURCH. Mr. President, I also asked about the joint military exercises of United States and Spanish forces and whether or not these did not give at least the appearance of a "commitment." I ask unanimous consent that the transcript of that exchange be printed here in the RECORD.

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

Senator CHURCH. We will, for the next 5 years under the new agreement, maintain substantial forces in Spain, will we not?

Mr. JOHNSON. We have the right to do so under this agreement and I anticipate that we will be maintaining forces there, primarily Air and Navy, as you know.

Senator CHURCH. And we have in the past and will in the future conduct joint operations with the Spanish forces?

Mr. JOHNSON. We have not conducted any joint operations with the Spanish forces. We have in the past at times had some joint exercises.

Senator CHURCH. What is the difference between a joint operation and a joint exercise?

Mr. JOHNSON. In my own mind it is a joint exercise.

EFFECT OF JOINT MILITARY EXERCISES

Senator CHURCH. Let's use "exercise." We have in the past engaged in joint military exercises with the Franco forces and will in the future.

Mr. JOHNSON. Yes; we have.

Senator CHURCH. If we have no commitment to defend Spain, what is the need to participate in joint exercises with the Franco forces?

Mr. JOHNSON. They have been in the past, as I recall it, primarily of a training nature, using Spanish territory for training purposes in which Spanish forces have participated and, as far as the Navy and the Air Force are concerned, both we and the Spanish have both air forces and navy forces in the area, and it seems to me perfectly natural that they should work together or learn to work together so that if an emergency arose in which the Governments were to make a decision that they were operating together, they would have some knowledge and experience with each other.

Senator CHURCH. Do you not think that one effect of joint exercises is to lead the Spanish to assume that there is contemplated a joint obligation in the event of a crisis that would involve the United States in the defense of Spain?

Mr. JOHNSON. In this connection, Senator, let me say that some of the exercises that have taken place in the past have been the cause of questions in both countries. Both we and the Defense Department have now established machinery to monitor more carefully such exercises and to be sure that decisions on carrying out such exercises are reached at senior political levels of the Government.

Senator CHURCH. Do you want to add anything to that, Dave?

Mr. PACKARD. Well, I would just like to emphasize that these are training exercises and there is considerable benefit to the Spanish from training with U.S. forces. I think that is probably the direction in which the benefit flows, and this is true of the naval training exercises.

I certainly do not see that these training exercises in any way involve a commitment to do any particular thing at any particular time. I think it is an advantage to the Spanish to be able to work with our military forces, and perhaps we get some benefit from working with them. But I do not see that these training exercises in any way involve a commitment to do any particular thing at any particular time.

JOINT EXERCISES WITH NONALLIED COUNTRIES

Senator CHURCH. Are we presently conducting joint military exercises with any other foreign power with which we do not have a treaty commitment?

Mr. JOHNSON. My own impression is, it is not unusual to do so, but I cannot think of a specific case.

Mr. CHURCH. Mr. President, in further discussion, the Senator from New Jersey (Mr. CASE) addressed himself to the very heart of the committee's inquiry. I ask unanimous consent, Mr. President, that pertinent portions of his questioning be printed in the RECORD at this point.

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

EXCERPT FROM TRANSCRIPT

Senator CASE. I say this because the word "commitment" is very often loosely used, sometimes to express an obligation so far as the future goes, sometimes to express a condition which already exists, that is, that troops are in place, therefore you are committed. We are talking about obligations for action in the future.

COMMITMENTS SUBJECT TO CONSTITUTIONAL PROCESSES

If this is so, why is a different expression used on page 2 of the treaty, in article 3 in which it is said that the obligation for expanding of exchanges in the educational and cultural fields is subject to the constitutional processes of the two countries. And chapter VIII on page 7, at the top, in which military commitments are said to be within the framework of their constitutional processes. Is there a reason for that difference in language and, if so, what is it?

Mr. JOHNSON. It was not deliberate.

Senator CASE. It was not deliberate?

Mr. JOHNSON. No, no.

Senator CASE. Mr. Secretary Packard, do you agree with that interpretation?

Mr. JOHNSON. I really had not noted the difference.

Mr. PACKARD. I agree with that. I do not see any difference of intention.

Senator CASE. No difference. In both, these conditions are inchoate and later dependent on later action by Congress.

Mr. PACKARD. Senator Case, I think there is only one commitment that is involved in this for future action and that would be for the United States to defend their military forces if they are attacked. I think that is the absolute limit of any commitment.

Senator CASE. Well, that is not a commitment to the other side.

Mr. PACKARD. That is not a commitment to the other side.

Senator CASE. And in no sense is it anything but the right of self-defense.

Mr. PACKARD. I would see nothing in this agreement that would make any commitment for us to do anything in respect to the defense of Spain.

Senator CASE. Or by itself constitute any additional power in the Executive to act without reference to Congress?

Mr. PACKARD. I would not see anything in that.

Senator CASE. That is an absolute flat statement on your part and yours, Mr. Secretary, also.

Mr. JOHNSON. It is, yes.

OBLIGATION TO DEFEND U.S. FORCES

Senator CHURCH. Senator, would you yield to me so that I might clarify that point. It is a very important point.

Under the agreement, it is clear that these bases at which American forces will be stationed are actually Spanish bases, is this not true?

Mr. JOHNSON. That is correct.

Senator CHURCH. How could an attack take place on these Spanish bases that would not constitute an attack on us and thus involve us in the necessity of responding? What kind of an attack could take place which would not also be an attack on us since we occupy the bases and since we have the right of defense? How could an attack upon these Spanish bases coming either internally or externally occur that would not constitute simultaneously an attack on us?

Mr. JOHNSON. Well, there are many Spanish bases and military facilities. We are present on only a few of them.

Senator CHURCH. Yes, but——

Mr. JOHNSON. If someone who chose to attack a facility on which we are present they would oboviusly also be attacking us as well.

PRESIDENT'S POWER TO SEND FORCES ABROAD

Senator CASE. I think the Senator from Idaho has raised a very important aspect of this whole matter, which is the power of the Executive to move American military forces onto foreign soil without the approval of Congress. I wonder if either of the Secretaries would have any comment on this, and perhaps discuss it in the light of other similar situations in which Executive agreements have been used, instead of treaties which require the consent of Congress, to station American military forces on foreign soil.

Mr. JOHNSON. Well, I would prefer to defer comment on that. That is a question that is being debated. There has been a lot of discussion, and I would prefer not to make just an off-the-cuff answer to that Senator.

Mr. CHURCH. Mr. President, Senators will recall that it was a little more than a year ago, on June 25, 1969, that the Senate, by a vote of 70 to 16, approved the national commitments resolution. We then took the position that a national commitment of the United States results from "affirmative action taken by the executive and legislative branches of the U.S. Government" expressed by means of a "treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment."

In compliance with this principle, the new contract with Spain cannot contain a "national commitment" on the part of the United States which the Senate will recognize, since an executive agreement is not a "treaty, convention, or other legislative instrumentality."

Moreover, high-ranking officials of the executive branch of the Government have

themselves testified that the new agreement entails no commitment on our part to defend Spain.

The Senate should now act to settle any doubt and to avoid any erosion by time or practice of this significant testimony. The constitutional responsibilities of the Senate, the role of the Congress as a coequal branch of this Government, and the need to fix clearly and strongly in the mind of the Executive and in the records of this agreement, all require that the Senate state without equivocation that this agreement does not constitute a national commitment by the United States to the defense of Spain.

Mr. President, for these reasons I submit the resolution, which reads:

S. RES. 469

Whereas the Committee on Foreign Relations in accordance with its responsibility to the Senate to consider matters related to "relations with foreign nations generally", "treaties", and "intervention abroad", as provided in the Legislative Reorganization Act of 1946, as amended, has examined the Agreement of Friendship and Cooperation between the United States and Spain, signed in Washington on August 6, 1970; and

Whereas on August 26, 1970, the Committee received testimony from the Under Secretary of State for Political Affairs and the Deputy Secretary of Defense to the effect that the aforementioned agreement entails no national commitment on the part of the United States to the defense of Spain; and

Whereas the said agreement is not in consequence of "affirmative action taken by the executive and legislative branches of the United States Government" expressed by means of "a treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment", as provided in S. Res. 85, 91st Cong., 1st session; Now therefore be it

Resolved, That it is the sense of the Senate that nothing in the said agreement shall be construed as a national commitment by the United States to the defense of Spain.

Mr. President, I ask that the resolution be received and appropriately referred.

The PRESIDING OFFICER (Mr. ALLEN). The resolution will be received and appropriately referred.

The resolution (S. Res. 469) was referred to the Committee on Foreign Relations.

COMMITTEE MEETING DURING SENATE SESSION—OBJECTION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare be authorized to meet on occupational health and safety during the session of the Senate today.

Mr. BAKER. Mr. President, I must reluctantly state that I have been requested to enter an objection to this action. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

ORDER OF BUSINESS

The PRESIDING OFFICER. The distinguished Senator from Ohio is to be recognized at this time.

Mr. CHURCH. 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. YOUNG of Ohio. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

At this time, pursuant to the previous order, the Chair recognizes the distinguished Senator from Ohio for not to exceed 20 minutes.

KY AND McINTIRE—TWO OF A KIND

Mr. YOUNG of Ohio. Mr. President, a rightwing extremist, so called, Minister Carl McIntire instead of preaching the gospel has become a bitter spokesman of hate disguised in the name of Christianity. He has invited Vice President Ky of the militarist Saigon regime to come to Washington and participate in his so-called march for freedom. This political minister and other speakers propose to speak out that Americans must fight on to complete victory and destruction of North Vietnam instead of withdrawing our combat troops and seeking a political settlement and instead of devastating destructive complete military victory for the Saigon militarist administration of Thieu and Ky.

When a news bulletin from Saigon reported some doubt as to Ky making this proposed visit, this so-called Reverend McIntire made a hurried air trip to Saigon to personally urge Vice President Ky to join him and speak at this so-called march for freedom demanding all out victory in Vietnam, Cambodia, and Laos regardless of the loss of thousands of more of our GI's killed in combat.

It is noteworthy that neither our Ambassador to Saigon, Ellsworth Bunker, nor President Nixon has extended an invitation to Ky to come to Washington. In fact, Vice President Ky made an arrogant statement in Saigon a few days ago:

U.S. Vice President Agnew came to Saigon without any invitation from me. Therefore, I don't need any invitation from President Nixon or Vice President Agnew to go to Washington.

Ky's visit is ill timed and may prove embarrassing to officials in the executive branch of our Government and also to us in the legislative branch who are sent to Washington as representatives of our people. Yet, it may be appropriate that McIntire and Ky participate in this rightwing extremist demonstration. McIntire preaches in America hate, bigotry, and oppression. Ky administers hate, bigotry, and oppression in South Vietnam.

McIntire is the puppet voice of rightwing extremist splinter groups such as the John Birch Society and Liberty Lobby, so called. Ky is the puppet voice of hate and oppression in Saigon, supporting not land reform for his people nor representing a majority of South Vietnamese, but simply expressing hatred and continuation of the rule of the militarists of Saigon and demanding continuing support of the American military-industrial complex profiting from our involvement in a civil war in Vietnam which has recently escalated and spread into Laos and Cambodia.

No one knows how the administration will react to the McIntire-Ky team in Washington, but it will be interesting to watch. The columnist Murrey Marder noted the initial reactions of Nixon advisers in an article, "Ky's Coming U.S. Visit Shakes Nixon Aides." I ask unanimous consent that the article be inserted at this point in the RECORD, and commend it to my colleagues' attention.

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

KY'S COMING U.S. VISIT SHAKES NIXON AIDES

(By Murrey Marder)

WASHINGTON.—The news from Saigon that Vice President Nguyen Cao Ky plans to join the Rev. Carl McIntire's "March for Victory" in Washington landed like a live hand grenade on the desks of Nixon administration strategists.

"Thank God it will be after Election Day" said one official—before learning that the rightist-sponsored march organized by the flamboyant preacher is scheduled for Oct. 3.

The timing puts the event right in the heat of the congressional election campaign leading up to the Nov. 3 voting.

That is precisely the time when long-range administration planning has been arranged to concentrate on fending off pressures from the opposite end of the political spectrum.

At that point in the fall calendar, the administration expects to be feeling the next heavy surge of anti-war protests from students, the academic community and other elements of the peace movement, which all may be zeroing in to support dove candidates in the November election.

For this reason, it is not just coincidence that the administration scheduled the withdrawal of at least 50,000 more U.S. troops from South Vietnam by Oct. 15. The rundown of troop levels in Vietnam is steadily proceeding to meet and exceed that goal.

In addition, the administration's planning would put it in position to produce, if it is deemed necessary, a new "peace initiative" to coincide with the political campaign period.

President Nixon's new delegation chief in the deadlocked Paris peace talks on Vietnam, Ambassador David K. E. Bruce, had his first meeting there Thursday with North Vietnamese delegation chief Xuan Thuy. After a series of private meetings between Mr. Bruce and Mr. Thuy, to take "soundings" about the prospects for breaking the long impasse, Mr. Bruce is scheduled to report back to Washington on how he rates the chances for any forward movement. The current outlook is anything but bright.

Even so, the intended timetable still leaves open the option to display "flexibility" in Paris.

The political necessity, even among the administration's strongest supporters in the war, to demonstrate a pro-negotiating position was evident last Tuesday in the cease-fire appeal that came from the Senate immediately after defeat of the McGovern-Hatfield "end the war" amendment.

KY IMAGE

The administration is acutely sensitive to these requirements on the left and on the right. But no one counted on having to face a combined Nguyen Cao Ky-Carl McIntire visitation.

Vice-President Ky has a public U.S. image as a total war "escalator"—which actually is a much overdrawn simplification of his position.

Mr. Ky's presence for President Eisenhower's funeral aroused little controversy, but a Ky visit under the auspices of Mr. McIntire could be a political nightmare.

Mr. McIntire has assailed even administration conservatives with charges that they are "soft on Communism" and have tried to "sabotage" his "anti-Marxist crusade." The State Department is one of his choicest targets.

Both in Saigon and in Washington, U.S. officials privately were stunned by the prospect.

"Maybe we had better deny the vice-president a visa," one U.S. official said half-seriously in Saigon. That happens to be a political impossibility. "Maybe President Thieu can talk Ky out of it," ventured a Washington official in private. "Perhaps Ky himself will realize this is just too embarrassing," suggested another. But no one in the administration yet has figured out what to say publicly.

Mr. YOUNG of Ohio. Mr. President, Frank Mankiewicz and Tom Braden have written in their column published in today's issue of the Washington Post, and no doubt in many other leading newspapers throughout our country, a very fine column under the caption "Some Questions for General Ky."

I ask unanimous consent that this column of the nationally known and highly respected columnists be inserted in the RECORD at this point as a part of my remarks.

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

SOME QUESTIONS FOR GEN. KY

(By Frank Mankiewicz and Tom Braden)

Unless he experiences a last-minute change of heart, Vice President Nguyen Cao Ky of South Vietnam will be in our midst within the week, to speak at a far-right "victory" rally at the Washington Monument grounds.

The rally is sponsored by the Rev. Carl McIntire, a fundamentalist radio pitchman who has characterized the Nixon administration this year as "soft on communism" and has termed the President's Vietnamization policy a "sellout." In Saigon, officials close to President Thieu are writing their American friends that Ky's motives in speaking here are "to undermine both Presidents, Nixon and Thieu."

If Ky makes himself available to U.S. journalists, here is a suggested list of questions that might be asked, all based on material previously made public, either in the United States of Vietnamese press:

1. Mr. Vice President, how do you account for the $15,000 per week you personally receive from the receipts of the Saigon race track? You have told us your people are fully mobilized for this war; if that is the case, just who goes to the races every day so as to enable the track to show a profit sufficient to pay you? (In 1967, Ky admitted he was receiving this money, and said he used it from time to time to pay disabled veterans. He had, up to that time, paid out the total sum of $65 for this purpose.)

2. Your protege, Gen. Do Cao Tri, has been much praised this year as the "Tiger of Cambodia" for his leadership of your troops there. What was his final explanation for the package he sent to Hong Kong earlier this year which was unexpectedly opened in customs and found to contain 71 million piasters in cash (official U.S. equivalent: $600,000)? Why would anyone want to send that many piasters out of the country, where they were practically worthless, unless to be used illegally—or by the enemy—for purchases back in South Vietnam?

3. Mr. Vice President, your old comrade, Gen. Dang Van Quang, is back in office as chief of intelligence. When you and he shared power as members of the "Military Revolutionary Council," he was the commander of IV Corps until dismissed for corruption. Did he ever make restitution for the money he took from his own soldiers?

4. What about your other colleague from the old days of the council, Gen Cao Van Vien, now the South Vietnamese chief of staff? Do he and his wife still lease government-owned real estate to Americans? Do they still own bordello hotels at the recreation center at Nhatrang?

5. Mr. Vice President, why was your mother-in-law, Mme. Hoang, who owns a string of "resorts" in Saigon, permitted to be the sole bidder on a construction contract at an air base to be used by the United States?

6. Finally, Mr. Vice President, what about that old smuggling rap? Back in 1964, when the CIA had set you up at the "commander" of a fictitious airline to fly South Vietnamese agents into the North, you were fired for using the planes to smuggle opium and gold from Laos. What ever happened to the 250 pounds of gold and the 450 pounds of opium which were seized? And your collaborator, Gen. Loc, who was fired as a result of the exposure from his post as director general of customs in Saigon—did he ever get his old job back?

These questions may seem light-hearted, but Gen. Ky is not. He has grown rich and powerful from this war, not from plundering his own people—whom he has more than once betrayed—but ours. He will stand in the shadow of the monuments to Lincoln and Washington, and lecture us on our responsibilities. Americans, to our shame, will applaud him.

IN DEFENSE OF ANTIOCH—FAMED AMERICAN INSTITUTION OF LEARNING

Mr. YOUNG of Ohio. Mr. President, officials of the District of Columbia Board of Education should reject the request of the subcommittee of the House District of Columbia Committee for the names of all personnel in the District of Columbia school system who ever attended Antioch College.

This is not only an insult to the fine teachers in the Washington public schools but also to Antioch College in Yellow Springs, Ohio, one of the Nation's finest institutions of higher learning.

I wish very much, Mr. President, that I could stand here and proudly say that I am an alumnus of Antioch College in Ohio.

Antioch has a great history and a noble tradition of being in the forefront in the struggle for civil rights and social justice for all Americans. Horace Mann, the father of the American system of public education, was its first president more than 118 years ago. Students and graduates of this fine liberal arts college have always been in the vanguard of those fighting tyranny, oppression, persecution, and intolerance. Antioch was the first college to adopt a work-study program whereby students alternate study years with years of work in the community.

In this manner, young boys and girls, high school graduates from Ohio and other States, who would not have the means of attending other great universities, are drawn to Antioch, where they spend 1 year on the campus studying, and then go out and spend another year working, thus enabling them to return to that college and finally to complete their higher education.

Mr. President, it is a fact that some outstanding teachers in the District of Columbia public school system are graduates of Antioch College. The District of Columbia is fortunate in that respect. It is also reported that some Vietcong flags have been seen in classrooms and—perish the thought—there has actually been some talk of Karl Marx. It is symptomatic of the myopia of the chairman of the subcommittee that he draw the inference, without any additional evidence whatever, that these two facts are related.

The chairman is a rather exceptional man indeed, because he is under indictment for bribery, conspiracy, and perjury. He has sought and obtained postponement of his trial, which to me, as a former chief criminal prosecuting attorney, seems rather queer, as usually a defendant in a criminal case who feels he is innocent of the charge, seeks a speedy trial instead of having his lawyer take steps to secure one postponement after another.

It is a perfect example of the logic of the witch hunters, of those who accuse everyone who disagrees with their brand of "Americanism" as a Communist or Communist sympathizer. We must repudiate these fearmongers, these men of small faith plotting the inquisition—investigations of our schools and colleges, of all institutions of a free society.

It has taken the Nation many years to recover somewhat from the witch hunts of the 1950's—from that era of pointless suspicion, fear, character assassination and ruined careers. Much of the debris of that period has been cleaned up but this action of the subcommittee chaired by Representative JOHN DOWDY reveals that vestiges of Joe McCarthyism remain to pollute our society.

This committee could better spend its time and energy in providing adequate appropriations for the District of Columbia school system, in helping to provide a better education for thousands of youngsters. This subcommittee is notorious in its neglect of the just needs of the District of Columbia public schools.

Furthermore if Representative DOWDY is anxious to investigate un-American organizations, he might first direct his attention to that notorious lunatic right-wing fringe group, the Liberty Lobby, which reportedly donated a large sum of money to the Congressman for his use in defending a pending criminal action against him, wherein he is charged with the crime of perjury for accepting a $25,000 bribe and of conspiracy. The Liberty Lobby, the John Birch Society, and other organizations of that ilk are the real subversive groups of our time along with some despicable extremist leftwing fringe organizations already labeled as such.

Mr. President, the District of Columbia school system is sick. It needs help. It needs money. It needs encouragement and support from the Congress. It does not need this unwarranted attack by a congressional subcommittee on the integrity of its faculty. I am hopeful that Board of Education officials will heed the advice of the local teachers' union and refuse to comply with this unconscion-

able request, made at the instigation of Representative DOWDY.

STOP ALL AID TO FASCIST GREEK COLONELS

Mr. YOUNG of Ohio. Mr. President, the Greek Fascist junta's recent disclosure that the resumption of U.S. military assistance to Greece "must be considered settled and the only question still pending is the exact date of the formal U.S. announcement of the resumption of aid" is a shocking and appalling development.

The United States stopped supplying Greece with heavy weapons and planes following the army colonels' coup d'etat in April 1967.

The arms ban was partially lifted several times, but full-scale aid has been withheld.

Twice in the last few months, in December 1969 and again in June of this year, the Senate came very close in voting for forbidding all U.S. military aid to the ruthless Greek military dictatorship. In the Senate debates, many Senators regardless of how they voted on different amendments, expressed their deep concern and opposition to the continuing repression of democratic freedom in Athens, the birthplace of democracy.

That is why I consider this amendment of the Greek junta unacceptable. I am sure that all my colleagues share my feelings of strong opposition and resentment in having a foreign government announce the intention and decisions of our Government before any statement whatever is forthcoming from officials of the executive branch or from President Nixon. It should be stressed, as this clearly indicates, that the Nixon administration failed to inform in advance the legislative branch of our Government on this crucial issue while its officials considered it expedient to brief the Greek junta. This, in my opinion, is a direct and calculated slap by Nixon administration leaders against the Senate of the United States and it must be treated as such by all of us in the Senate regardless of each one's position on the Greek regime.

Our continued support for the Fascist colonels now ruling in Athens clearly indicates that we have failed to learn that there is no difference at all between an extremist rightwing repressive regime and a leftwing Communist dictatorship. In both cases, the people suffer while a self-serving elite remains in power by terror, secret arrests, and force of arms.

Since a clique of army colonels overthrew the constitutional government of Greece in a midnight coup more than 3 years ago, the United States has given $234 million of taxpayers' money in military aid to help maintain that junta in power.

The saddest part of the tragedy in Greece is that in the minds of free people everywhere we have been accomplices of the Fascist colonels, subsidizing their sadistic regime with our arms assistance.

Mr. President, under the present ruling Fascist Greek regime thousands of political prisoners in Greece, both men and women—they say the number exceeds 34,000—have suffered physical and mental tortures beyond belief. The horrors of the concentration camps of Nazi Germany are being relived in the dungeon cells of Athens Bouboulinas Street prison where torture specialists and sadists have been given free reign to practice their scientific torture methods upon men and women imprisoned, most without trial. Many thousands—probably more than 50,000 men, women, and children have been exiled to different Greek islands far distant from their homes in Greece.

The United States can no longer afford to ignore the brutality that is being perpetrated by these Fascist colonels and their underlings. Many of them are the same colonels who received their training from the U.S. military, many as cadets at West Point, and who used American weapons to overthrow the constitutional government in Athens.

Mr. President, we must immediately stop military aid to Greece—aid which is used to perpetuate dictatorship. What is the difference in reality between a Fascist junta governing by decree and Communists governing by decree? I would like to have some rightwing extremist explain this to me.

Our interest lies in a strong democratic Greece. Without our continued extensive support the Fascist colonels could not remain in power for more than a few months. The United States should take steps to remove forthwith all support whatever for the Fascist government of Colonel Papadopoulos.

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

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. 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.

NO KY ON OCTOBER 3

Mr. DOLE. Mr. President, on October 3 some well-meaning Americans, perhaps joined by the Vice President of South Vietnam, General Ky, are going to hold a march for victory in South Vietnam.

I would like to comment both on the march and on the proposed visit of Vice President Ky.

I think there is no question but that this march is going to backfire; that it is going to create more dissent and possible new strife in America, that it is going to give those who have used America's participation in Vietnam to stir up disorder and anarchy further excuse to do so.

It is going to accomplish no good.

Mr. President, perhaps there was a time to win the war in Vietnam. Perhaps if McNamara and Clifford and President Johnson had set out to achieve a military victory instead of a stalemate that victory could have been achieved. But that time is past.

What President Nixon is aiming for now is to make the South Vietnamese capable of defending themselves against a weakened enemy. And when that is done, ending American participation in the fighting and withdrawing American troops.

If there is a consensus in this country, it is that that is the proper step. For the most part, Americans only differ on the speed with which that withdrawal should be accomplished and whether we should make sure that the South Vietnamese can defend themselves before we withdraw.

UNREALISTIC DEMAND

The demand for total victory is unrealistic in view of today's political climate. What we seek instead is a just peace under which the South Vietnamese can decide their own future.

I cannot understand how the sponsor of the march, Dr. Carl McIntire, can disagree with this any more than I can understand how the doves can, in honor, settle for any less.

I strongly urge that Dr. McIntire call off his march. It will accomplish nothing except to give the organizers of the new mobe and the SDS, among others, a new propaganda vehicle. I might say that these forces already have been set in motion.

I also strongly urge Vice President Ky not to joint in that march for the same reason.

Some 43,000 Americans have died in Vietnam in the hope that a free Vietnam means a free Indochina and that in turn gives freedom a chance elsewhere in the world.

For General Ky now to come here and demand of Americans a new escalation involving more American lives, more American treasure and more American sacrifice is bad taste to say the least.

This may be good for the internal politics in South Vietnam, in the event there is a political struggle between Vice President Ky and President Thieu, but it would appear to me it is now time for Vice President Ky to exercise wisdom and judgment and respectfully decline the invitation extended by Mr. McIntire.

They have a right, of course, to have a march. They have a right to express their views. But I sincerely trust Vice President Ky will use his best judgment and refrain from any participation.

If he wishes to speak with Government officials, with the President or the Vice President, that is one thing, but to come to America and join in participating with a private group, does a disservice to our country and to those who have fought and died for the country of South Vietnam.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF MODIFICATIONS IN LOANS TO THE MINNKOTA POWER COOPERATIVE, GRAND FORKS, N. DAK.

A letter from the Acting Administrator, Rural Electrification Administration, Department of Agriculture, reporting, in accordance with REA power supply survey policy of certain modifications in REA approved loans to the Minnkota Power Cooperative of Grand Forks, N. Dak.; to the Committee on Appropriations.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the continued loss of revenue because of low rents charged for personnel quarters by the Veterans' Administration, dated September 21, 1970 (with an accompanying report); to the Committee on Government Operations.

REPORT OF NEGOTIATED SALES CONTRACTS

A letter from the Director, Bureau of Land Management, transmitting, pursuant to law, a report of negotiated sales contracts for disposal of materials during the period January 1, through June 30, 1970 (with an accompanying report); to the Committee on Interior and Insular Affairs.

REPORTS OF VETERANS' ADMINISTRATION

A letter from the Administrator, Veterans' Administration, transmitting, pursuant to law, reports concerning the activities of the Administration under fiscal year 1970 programs for the sharing of medical facilities and for exchange of medical information (with accompanying reports); to the Committee on Labor and Public Welfare.

ENROLLED BILL SIGNED

The PRESIDENT pro tempore announced that today, September 22, 1970, he signed the enrolled bill (H.R. 10149) for the relief of Jack W. Herbstreit, which had previously been signed by the Speaker of the House of Representatives.

REPORT ENTITLED "PATENTS, TRADEMARKS, AND COPYRIGHTS"—REPORT OF A COMMITTEE (S. REPT. NO. 91-1219)

Mr. McCLELLAN, from the Committee on the Judiciary, pursuant to Senate Resolution 49, 91st Congress, first session, submitted a report entitled "Patents, Trademarks, and Copyrights," which was ordered to be printed.

BILLS INTRODUCED

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

By Mr. MANSFIELD (for himself and Mr. CHURCH):

S. 4371. A bill to abolish the Interstate Commerce Commission at a future date and to establish a commission to make recommendations with respect to carrying out the functions of the Interstate Commerce Commission after such date; to the Committee on Commerce.

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

By Mr. GURNEY:

S. 4372. A bill for the relief of Stephen Lance Pender, Patricia Jenifer Pender, and Denese Gene Pender; to the Committee on the Judiciary.

By Mr. DODD:

S. 4373. A bill for the relief of Ana Maria Goncalves Gomes Daniel; and

S. 4374. A bill for the relief of Candida Augusto Baptista De Albuqueque; to the Committee on the Judiciary.

By Mr. METCALF (for himself and Mr. MANSFIELD):

S. 4375. A bill relating to the status of the Little Shell Band of Chippewa Indians of Montana; to the Committee on Interior and Insular Affairs.

By Mr. PACKWOOD:

S. 4376. A bill for the relief of Mrs. Alzier Northover; to the Committee on the Judiciary.

By Mr. DODD:

S. 4377. A bill for the relief of Jaime Interior Capule; to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 4378. A bill for the relief of Cheong Kwong Lam; to the Committee on the Judiciary.

By Mr. HANSEN:

S. 4379. A bill for the relief of Oclides Gonzales Barrero; to the Committee on the Judiciary.

By Mr. BURDICK:

S. 4380. A bill for the relief of West Fargo Pioneer; to the Committee on the Judiciary.

By Mr. HANSEN:

S. 4381. A bill to amend the Social Security Act to provide for medical and hospital care through a system of voluntary health insurance financed in whole for low-income groups, through issuance of certificates, and in part for all other persons through allowance of tax credits, and to provide a system of peer review of utilization, charges, and quality of medical service; to the Committee on Finance.

By Mr. JACKSON (for himself and Mr. MAGNUSON) (by request):

S. 4382. A bill to provide for the disposition of funds arising from judgments in Indian Claims Commission dockets Nos. 178 and 179, in favor of the Confederated Tribes of the Colville Reservation, and for other purposes; to the Committee on Interior and Insular Affairs.

ADDITIONAL COSPONSORS OF BILLS

S. 4358

At the request of the Senator from Delaware (Mr. BOGGS), the Senator from Hawaii (Mr. FONG) and the Senator from Vermont (Mr. PROUTY) were added as cosponsors of S. 4358, the National Air Quality Standards Act of 1970.

At the request of the Senator from West Virginia (Mr. RANDOLPH), the Senator from Utah (Mr. MOSS) was added as a cosponsor of S. 4358, the National Air Quality Standards Act of 1970.

At the request of the Senator from Maine (Mr. MUSKIE), the Senator from California (Mr. MURPHY) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 4358, the National Air Quality Standards Act of 1970.

S. 4370

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Minnesota (Mr. MONDALE), I ask unanimous consent that, at the next printing, the name of the Senator from Wisconsin (Mr. NELSON) be added as a cosponsor of S. 4370, to amend the Communications Act of 1934 in order to require licensees operating broadcasting stations under such act to broadcast information with respect to the dangers involved in the improper use of drugs.

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

SENATE RESOLUTION 468—RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON COMMERCE

Mr. PASTORE, from the Committee on Commerce, reported the following original resolution (S. Res. 468); which was referred to the Committee on Rules and Administration:

S. RES. 468

Resolved, That the Committee on Commerce is hereby authorized to expend, from the contingent fund of the Senate, $100,000, in addition to the amount, and for the same purposes and during the same period, specified in Senate Resolution 324, Ninety-first Congress, agreed to February 16, 1970.

SENATE RESOLUTION 469—SUBMISSION OF A RESOLUTION TO EXPRESS THE SENSE OF THE SENATE ON THE AGREEMENT OF FRIENDSHIP AND COOPERATION BETWEEN THE UNITED STATES AND SPAIN

Mr. CHURCH submitted a resolution (S. Res. 469) to express the sense of the Senate on the Agreement of Friendship and Cooperation Between the United States and Spain, which was referred to the Committee on Foreign Relations.

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

DIRECT POPULAR ELECTION OF THE PRESIDENT AND THE VICE PRESIDENT—AMENDMENT

AMENDMENT NO. 931

Mr. ERVIN submitted an amendment, in the nature of a substitute, intended to be proposed by him, to the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States relating to the election of the President and the Vice President, which was ordered to lie on the table and to be printed.

AMENDMENT OF EXPORT-IMPORT BANK ACT OF 1945, AS AMENDED—AMENDMENT

AMENDMENT NO. 932

Mr. WILLIAMS of New Jersey. Mr. President, last week I announced my intention of proposing three specific measures designed to insure Israel of the military and economic aid she desperately needs to survive as a secure and independent nation in the Middle East. I referred to these measures as a "Marshall plan" to focus attention on the kind of farsighted commitment that is required.

Today, I am submitting on behalf of

myself and the Senator from Illinois (Mr. PERCY) a measure directed toward Israel's defense needs.

Earlier this month, the Senate adopted a measure authorizing the sale to Israel of jet aircraft under long-term credit arrangements as part of the military authorization bill. An amendment to delete the jet sale authorization was defeated overwhelmingly by a roll call vote of 87 to 7.

One of the primary reasons for this action by the Senate was the statement by Secretary of Defense Laird that "the requirements of Israel have increased significantly since 25 February 1970." Secretary Laird made this statement on August 31. Since that time, the Egyptians have continued moving the Soviet-built SAM–II missiles closer to the Suez Canal, and the Soviet Union has moved the more sophisticated SAM–III missiles close to the canal both in violation of the stand-still provisions of the cease-fire agreement.

Israel, it is clear, needs jet aircraft and other defense items. She also clearly wants to purchase this equipment, but needs satisfactory credit arrangements. The size of Israel's credit needs were reflected by Secretary Laird who recognized that:

We must provide credit to Israel in a substantially larger amount than we have anticipated.

The military authorization bill goes part of the way toward achieving that goal. However, the funds available for Israel under that legislation may, at any point in time, be limited by the other defense needs that are served by military appropriations. Furthermore, the military authorization bill makes no provision for credit sales for military equipment other than jet aircraft and equipment directly related to such aircraft.

That credit gap could be filled by the Export-Import Bank but for prohibitions which currently exist in legislation.

The Export-Import Bank Act provides in part:

The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of defense services to any country designated under section 4916 of the Internal Revenue Code of 1954 as an economically less developed country for purposes of the tax imposed by section 4911 of that Code. The prohibitions set forth in this paragraph shall not apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arms races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress.

Israel could clearly qualify for a Presidential exception. She is directly threatened by the Soviet Union. She is a democracy which is dedicated to social progress, not only for her own people but others throughout the world, and she has tried desperately for 22 years, during which she has had to maintain a state of military preparedness constantly, to avoid expenditures needed for peaceful economic progress.

The exception in the Export-Import Bank Act, however, has been nullified by section 32 of the Foreign Military Sales Act which provides: For purposes of the Export-Import Bank Act, Israel has been classified as a less-developed country. Therefore, she is ineligible for the extension of credits for purchase of military equipment.

The Export-Import Bank has verified that Israel is ineligible. I ask unanimous consent that a recent exchange of correspondence with the Bank be printed in the RECORD at this point in my remarks.

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

JUNE 26, 1970.

Mr. HENRY KEARNS,
President and Chairman, Export-Import Bank of the United States, Washington, D.C.

DEAR MR. KEARNS: Section 4 of the Export-Import Bank Extension enacted on February 22, 1968 provides that:

"(4) The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of defense articles and defense services to any country designated under action 4916 of the Internal Revenue Code of 1954 as an economically less developed country for purposes of the tax imposed by section 4911 of that Code. The prohibitions set forth in this paragraph shall not apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arms races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress."

However, Section 32 of Public Law 90–629 enacted in October of 1968 contains a prohibition against military export financing by the Export-Import Bank in connection with the sale of defense articles and defense services entered into with economically less developed countries after June 30, 1968.

The issue raised by these two conflicting sections is whether or not Section 32 is a complete prohibition against engaging in such defense financing or whether such financing can still be entered into if the President makes the determination that it is in the national interest and so reports to the Congress.

I would, therefore, appreciate your interpretation of this Act and a list of any sales financed by the Bank to economically less developed countries since June 30, 1968. Your prompt reply to this request is sincerely appreciated.

With every good wish, I am

Sincerely,

HARRISON A. WILLIAMS, Jr.

EXPORT-IMPORT BANK OF THE UNITED STATES,
Washington, D.C., July 2, 1970.

HON. HARRISON A. WILLIAMS, Jr.
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: We have received your letter of June 26, 1970, to Mr. Kearns concerning sales of defense articles and defense services to economically less developed countries.

Mr. Kearns is presently out of the country and therefore your letter has been referred to me for reply.

Section 4 of the Export-Import Bank Act of 1945, as amended on February 22, 1968, in our opinion, was superseded by Section 32 of P.L. 90–629 which was enacted effective June 30, 1968. Therefore, the Bank is prohibited from financing any sales of defense articles or defense services to any economically less developed country. We consider Section 32 of the Foreign Military Sales Act as a complete prohibition without any Presidential waiver.

Since June 30, 1968, we have not made any loans or assisted in any financing of any sales of defense articles or defense services in any way to any economically less developed country.

If we can be of further assistance please do not hesitate to contract the undersigned.

Sincerely,

J. E. CORETTE, III,
General Counsel.

Mr. WILLIAMS of New Jersey. The measure I propose today, Mr. President, would amend the Export-Import Bank Act to authorize its full range of financial provisions to enable Israel to purchase military equipment on the most favorable terms possible.

Let me note for the RECORD, one extremely important fact about the prior relationship between Israel and the Export-Import Bank.

According to figures published by the House Foreign Affairs Committee, the average current state of loan repayment to the Export-Import Bank by all the nations which have loans outstanding is 72 percent. That is, 72 percent of all loans made have been repaid.

Israel is well above the average, having repaid 85 percent of loans made to it by the Bank. Specifically, Israel has repaid $247.6 million of a total of $288.4 million in loans.

This is to be compared with the repayment experience of three other countries to whom we have sold military equipment or are in the process of selling military equipment—Greece, Spain, and Nationalist China.

Greece has repaid $26.2 million of $37.7 million for a rate of 69 percent. Spain has repaid $205.4 million of a total loan of $551.3 million for a rate of 37 percent. Nationalist China, which has borrowed $105.8 million, has so far only repaid $18.4 million, at a rate of only 17 percent. Clearly, Israel is one of the best credit risks in the world.

I know there are many of my colleagues who do not look with favor on the Export-Import Bank making loans to the so-called underdeveloped countries for military purposes. As a general proposition, I agree. However, as we all recognize, Israel is faced with a crisis. So are we.

In my judgment, we must find every way to enable Israel to maintain a credible military deterrent.

I am offering this measure as an amendment to S. 4268 for the simple reason that hearings have already begun on S. 4268 and it therefore may be possible to enact this measure despite the limited amount of time left in this Congress.

I ask unanimous consent that my amendment be printed in the RECORD.

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

The amendment (No. 932) was referred to the Committee on Banking and Currency, as follows:

AMENDMENT NO. 932

At the end of the bill insert a new section as follows:

"SEC. 2. Notwithstanding section 2(b)(4) of the Export-Import Bank Act of 1945, section 32 of the Foreign Military Sales Act, section 5 of the Act of July 7, 1968 (Public Law 90-390), or any other provision of law, the Export-Import Bank of the United States may exercise its authority to extend loans, guarantees, and insurance, and to participate in extensions of credit, in connection with the sale of defense articles or defense services to Israel."

Mr. PERCY. Mr. President, I thank the distinguished Senator from New Jersey (Mr. WILLIAMS) for his able presentation of the need to extend credits and guarantees to Israel for purchases of defense articles and defense services.

The case has been made so well that I shall not make it again. I would only say this:

If Israel is not given the long-term, easy credit she needs to purchase the wherewithal for her defense, there could come a day when Soviet-equipped Arab forces would have sufficient military advantage to destroy Israel. On that day the United States would be faced with two alternatives—one, to send American men to fight for Israel, or, two, to abandon Israel to her enemies. To save Israel and to make such a choice unnecessary, we must now provide Israel with long-term easy credit for military purchases in the United States.

I would make one more point. Today the Export-Import Bank provides credits and guarantees for defense articles and defense services to Italy, Australia, and Spain. The Bank also considers eligible for such credits and guarantees the nations of Austria, Belgium, Canada, Denmark, West Germany, France, Iran, Ireland, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, and Sweden. Yet Israel is considered ineligible because she is categorized as an economically less developed country.

It seems to me that what is good for Italy, whose borders are not threatened, should be good for Israel. It seems to me that what is good for Australia, which is not endangered by hostile adversaries, should be good for Israel. And it seems to me that if San Marino, Liechtenstein, Luxembourg, and Monaco are eligible for such credits and guarantees, Israel's need must be considered at least as great as theirs.

Moreover, I believe that loans to sustain the independence of Israel, the security of her people, the integrity of democracy in the Middle East, and to maintain a balance of power essential to peace, are good for the United States.

SOCIAL SECURITY ACT AMENDMENTS OF 1970—AMENDMENTS

AMENDMENTS NOS. 933 THROUGH 941

Mr. MONDALE. Mr. President, I am submitting today nine amendments to H.R. 17550, the Social Security Act Amendments of 1970.

To grow old and retire in the United States today is to surrender rather than gain independence. In 1935, when the Social Security Act became law, President Roosevelt regarded it as "historic" and the beginning of a "supreme achievement" of national legislation. Thirty-five years later, this Government has not redeemed that promise. We have not protected the economic trust of senior Americans; we have rather seen their rewards for labor eroded, and concurrently millions of older citizens have become imprisoned in poverty.

The average retired citizen over 65 receives only 30 percent of his previous wages. Seven million Americans over 65 are condemned to poverty; almost 30 percent of all Americans over 65 live in poverty, as opposed to 12 percent of all other citizens. Nearly half of all persons over 65 have less than $1,500 income per year; particularly distressing is the statistic that 60 percent of elderly widows are in poverty, and this figure is 85 percent for nonwhite widows. Each day I receive letters from older citizens about to lose homes because pensions cannot keep pace with property taxes. How such elderly persons manage to survive is often incomprehensible to me.

Particularly distressing is the realization that many citizens who are now retiring or approaching retirement had to bear the heavy burdens of the depression and the Second World War; in the twilight of their citizenship we owe these Americans economic security.

As technology accelerates, problems of age are exacerbated. Skills gained in earlier decades need updating. Increased mobility and corporation mergers quickly depreciate old associations. Family and personal relationships are geographically split. As economic and physical ability declines with age, vocational and social handicaps press upon the elderly as never before.

Elderly rural residents are particularly disadvantaged. Approximately 15 percent more elderly persons live in poverty in rural as opposed to other areas. The rapid advances in medical technology have generally not become available to elderly rural residents who often do not have the financial means to travel to urban medical centers. In addition to medical clinics, social service centers and housing for the elderly have not been brought to rural areas. In both rural and urban areas the presence of weakened, lonely, poverty stricken Americans quietly dying in wretched surroundings is all too hauntingly familiar.

The United States has not even kept pace with other industrialized Western nations in efforts to assist the elderly. During the last decade, Sweden, West Germany, and France have outstripped us in average amounts spent per capita on benefits to the elderly. In addition, these and other Western countries have spent significantly larger percentages of gross national product to aid older citizens, in some cases doubling our effort.

I propose, Mr. President, that we begin now to remedy this national neglect.

The 5-percent increase in across-the-board benefits in the House bill will not even match the 6-percent annual cost of living increase which is now devastating the lives of the elderly. I propose a 10-percent increase.

I propose the establishment of a $100 monthly minimum benefit level for those with substantial service, with increases tied to the cost-of-living index. I estimate that this step would remove approximately 2 million elderly citizens from poverty.

As retirement ages decrease, we must make adequate provision for those older persons who wish to remain active by working part time. Inflation demands that the amount of other income allowed under social security eligibility tests be raised to a maximum of $2400 yearly. The Nation ought to provide more incentive for the aged to remain usefully active and for the society to be able to benefit from their skills.

In the interest of equity in computing social security benefits, I propose that payments be based on a recipient's highest earnings level in a 10-year period; and in the year in which benefits begin, the retirement earnings test should not begin until after the date when benefits are actually received. Finally, death benefits should actually cover expenses for annuitants and also their wives or widows.

Little elaboration is required, Mr. President, on the high cost of medical care, and the inability of retirees to bear that cost on severely limited income.

Retirees cannot afford the cost of supplementary medical insurance, which has now risen to over $60 annually. I propose a rollback of those premiums to $3 per month after June 1971, and absorption of costs in excess of premium payments by general revenues.

I propose that persons entitled to disability insurance benefits be eligible for hospital insurance and supplementary health insurance on the same basis as persons 65 and over.

One of the most insensitive provisions of medicare is the requirement that participants pay a "blood deductible" charge for the first 3 pints of the lifegiving fluid which they may require. I propose abolishment of this absurd and inhumane regulation.

Much political capital has been made of abuses of the public purse under some of our medical programs. All investigations have revealed, however, that it is primarily vendors and practitioners of health services who have abused Government's assistance, and not the beneficiaries themselves. No dispute can be offered to the need of the elderly for prescription drugs, for instance. This is one of the most burdensome costs of age; older citizens spend three times more for drugs than do younger persons, and 20 percent of all senior citizens spend $100 or more annually on drugs.

We need to regulate abuses by suppliers of this need, and also to assist the elderly in bearing the cost. I propose to include payments for lifesaving drugs.

Finally, I propose that all persons not otherwise entitled to hospital insurance benefits would become so at age 72; the full cost of these benefits to be paid out of general revenue.

We must take adequate steps to provide equitably for older citizens. This is not largesse; it is their social and economic right. We must remove the uncertainties and insecurities of aging in the United States, and begin to redeem the promise made in 1935. I urge prompt and favorable consideration of these amendments.

The PRESIDING OFFICER (Mr. PACKWOOD). The amendments will be received and printed, and will be appropriately referred.

The amendments (Nos. 933 through 941) were referred to the Committee on Finance.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 915 TO H.R. 17604

Mr. McGOVERN. Mr. President, I ask that my name be added as a cosponsor of amendment No. 915 to H.R. 17604, to end the naval shelling, bombardment, and other weapons activities on the small inhabited island of Culebra and its surrounding cays.

Culebra, which is only 7 miles long by 2 miles wide, is a municipality of the Commonwealth of Puerto Rico inhabited by 726 U.S. citizens. These American citizens, who have fought loyally for their country in both World Wars, in Korea, and in Vietnam, have no vote in Congress, and it is therefore the responsibility of every Member of Congress to protect their rights and represent their legitimate democratic demands.

The citizens of Culebra and, indeed, of Puerto Rico as a whole have asked that the Navy cease its use of Culebra as a target. The Honorable Ramon Feliciano, mayor of Culebra has spoken for his fellow islanders:

> The constant shelling and the occurrence of accidents which the Navy has denied instilled fear and desperation in the citizens to the extent of fearing for their lives and demanding that the Navy abandon Culebra and leave the Culebrans to live in peace.
>
> We are not anti-Americans. Our town sent men to defend the Nation in all of the conflicts to defend the Democracy which is the most precious heritage of our forefathers. This beautiful patrimony has been ignored and abused in Culebra by the United States Navy in that for so many years they have not given us the opportunity to enjoy the free movement which belongs to every community of American citizens. Contrary to the rights of a town and its people they have converted us into a target for target shooting day after day consecutively up to the point of destroying our health and our spirit. The Navy must leave Culebra in peace—Testimony before the Real Estate Subcommittee, House Armed Services Committee, June 10, 1970 (stenographic transcript, pp. 14, 15).)

The Navy has been callous in ignoring the basic human rights of the humble citizens of Culebra, who have endured the use of their home island as a target since 1936. As loyal Americans, the Culebrans accepted the Navy's indifference and, according to testimony before the House Armed Services Committee, even outright harassment in the belief that their sacrifices were necessary in the interests of national defense. During this period accidents occurred, including three Culebrans who lost limbs and one who lost an eye; in addition, in 1949 nine Navy men were killed when a Navy plane bombed the supposedly safe observation post on Culebra itself. Moreover, there have been numerous near-misses, including a recent incident in which a Navy shell fell in the cistern adjacent to the townhall.

Within the last year, however, the Culebrans have been provoked to the point of no return. Since 1960, the level of weapons activity has increased to an intolerable level; during 1969, for example, the Culebra target complex was in use an average of 9½ hours per day 6 days each week, with an additional 3½ hours on Sundays. In a study completed this year, the Puerto Rican Civil Rights Commission issued a Special Report on Culebra, which concluded, inter alia:

> The military training operations in the restricted zone [the area where operations are currently being carried out] are *excessively intense, continuous, irregular and dangerous.* They comprise almost the whole perimeter of the Island of Culebra, its adjacent islets and keys. They are carried out by day and by night close to the town disturbing the tranquility, security and the sleep of its inhabitants." (English Version, p. 98.)

The final blow came when the Navy, which now owns approximately one-third of the island, proposed to acquire an additional one-third. This proposal would clearly mean an end to the economic viability of the island, where the yearly per capita income today is about $400. It is no secret, as the New York Times has observed:

> What the Navy has really wanted for fifteen years is to buy all of Culebra and resettle the island's residents elsewhere. (Editorial, July 10, 1970, p. 32C).

This became politically impossible in Puerto Rico, as the Navy has conceded. Nevertheless, when one considers the compound effect of the Navy's acceleration of bombardment and shelling and the proposed acquisition of additional land, which would be used in part for firing Walleye missiles, one must conclude that the Navy has not yet given up its intentions to eventually acquire the whole island. If one is presumed to intend the foreseeable consequences of one's actions, the Navy must be presumed to have tried to deprive the Culebrans of their homes in a most underhanded manner. The Washington, D.C., Evening Star recently declared:

> Since attempts to dissolve the already transplanted town failed a decade ago, the Navy has stepped up its shelling schedule to over nine hours a day on weekdays, over three on Sundays, perhaps out of necessity, but perhaps also in the hope of driving the natives away.
>
> That needs investigation. (Editorial, August 31, 1970, p. A–6).

It does indeed.

Puerto Rico's distinguished Representative in Congress, Resident Commissioner Jorge L. Córdova, who has had long experience dealing with the Navy on Culebra, recently declared:

> The Navy has of late assumed a position of utter and arrogant intransigence, and it is my opinion that passage of [the Goodell-Cranston] amendment is necessary.
>
> In Puerto Rico opposition to the Navy's use of Culebra as a target has been unanimously expressed by all political parties. . . ." *See* Cong. Rec., S. 14837, Sept. 1, 1970 (daily ed.)

Even the Armed Forces Journal, which calls itself "Spokesman of the Services Since 1863," cannot stomach the Navy's position on Culebra. The Editors recently declared:

> Our hearts are with the Navy, but not about Culebra." (May 23/26, 1970, p. 28).

The distinguished Senator from Washington (Mr. JACKSON) has been conducting hearings in executive session with the Navy in an attempt to bring about a compromise solution. I support Senator JACKSON'S efforts in the hope that the Navy will agree to a reasonable phaseout plan. However, if the Navy forces the issue I will do all I can to see that the Navy leaves the Culebrans in peace.

Senator JACKSON said recently:

> What is at stake is the quality of life on Culebra and the Navy's right to decide how far it can go in affecting the lives and well-being of the people of Culebra." Cong. Rec., S. 14381, Aug. 27, 1970 (daily ed.).

I agree, and I believe that the Navy has already gone too far.

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

ADDITIONAL STATEMENTS OF SENATORS

THE SITUATION IN JORDAN

Mr. PEARSON. Mr. President, recent events in Jordan are tragic and disturbing. The civil war between the forces loyal to King Hussein and the Palestinian commandoes has tragic consequences for the people of Jordan and also threatens the lives of several hundreds of Americans. But the conflict there also has implications for the long term future stability of the Middle East. This is particularly true because of Syria's ill-advised and irresponsible intervention in Jordan.

Mr. President, the U.S. Government is, of course, greatly concerned because American lives have been endangered, because of our deep commitment to peace and stability in the Middle East and also because the King Hussein government has shown considerable restraint and responsibility in the long simmering dispute between Arab and Jew. Because of Hussein's moderation, because of his ability and willingness to communicate with the West, we tend quite naturally, I think, to be interested in his survival. This interest is intensified by the fact that those who now challenge Hussein are among those who are the most bitterly hostile toward Israel and the least cooperative in recent efforts to attain a peace settlement between Israel and the Arab countries.

Because of all these factors there are

those who counsel that we should intervene in Jordan to assure the survival of the Hussein government. Mr. President, it is imperative that we stand ready to take whatever action is necessary to protect the lives of all Americans in Jordan. I would hope that this type of action will not be necessary, but should it become apparent that we must act to protect American lives, I hope that our intervention will be limited to that objective. Under present and anticipated conditions, I do not believe that major military intervention on our part would be justified or desirable. Certainly we must continue all possible diplomatic efforts to bring about an end to that war, but unless a new set of factors is injected to the conflict, I would hope that our Government would not make the decision that our interests require a major intervention. Direct involvement on our part would surely further increase Arab hostility toward the United States and further weaken our ability to negotiate with Arab leaders. Moreover, given the Russian presence in the Middle East, a major U.S. intervention would further strain our relationships and possibly close the lines of communication precisely at the time we are trying to bring about a settlement to the Israel problem. Indeed, a major intervention on our part could lead to a direct Soviet-United States confrontation.

But even in the absence of a significant Soviet presence in the Middle East, I believe that a major U.S. intervention in Jordan would be unwise. The possibility that we could get in and get out quickly is very remote. Rather, it seems likely that once involved we would find ourselves entrapped in a long and nasty conflict. I hope we will have no part of it. The Arabs can and should settle this one themselves.

PRISONERS OF WAR

Mr. MUSKIE. Mr. President, the prisoner-of-war issue continues to be one of the great tragedies of the war in Vietnam. The continued refusal of the North Vietnamese and the Vietcong even to release the names of all Americans they hold prisoner is a violation not only of the Geneva Convention on Protection of Prisoners of War but of humanitarian considerations which are not bound by political or national differences. Regardless of the conditions in prisons where Americans are being held, we must agree that the anxiety suffered by the families and friends of these Americans is a most basic form of cruelty.

Such treatment is an offensive reproach to the civilized conscience.

Our Government must continue to press for the release of the names of these Americans. This we can hopefully accomplish through united expressions of concern, such as the joint meeting of Congress today, and through bringing our concern to the attention of other nations of the world, as Mr. Borman has done.

Yet we cannot allow our efforts to stop short of what must be our highest priority in this matter—the repatriation of all Americans now held prisoner by the North Vietnamese and Vietcong.

Unfortunately, we cannot accomplish this goal through simple expressions of concern.

Nor can we accomplish this goal through the process of Vietnamization, which merely slows down the pace of the war and could keep us involved in Vietnam for some time to come.

We are engaged in a war which is in many ways different from wars we have fought in the past. Yet it is the rule in war, rather than the exception, that all prisoners are not released until the fighting has ceased. Our offer to exchange prisoners with the North Vietnamese, and their refusal even to consider this offer, must be considered, then, in light of our policy of continued pursuit of a military solution in Vietnam which may take years to accomplish.

Mr. President, I am convinced that the only way we will achieve the goal of a return of all prisoners is through a negotiated settlement. The recent offer initiated by the Hanoi delegation to the Paris peace talks must be considered closely. And we must continue to press for the undertaking of serious negotiations on all aspects of terminating this war, with the prompt release of all American prisoners in Vietnam of the highest negotiating priority.

Efforts on behalf of our men must not flag. We would break faith if our concern for them is not accompanied by our strongest possible effort to deal with the broader issues of the war, of which they are tragic victims.

A SUPPLEMENTARY EXTRADITION CONVENTION WITH FRANCE HELPS WITH HIJACKING AND NARCOTICS

Mr. McINTYRE. Mr. President, I was pleased with the action of the Senate yesterday in ratifying the further convention with France.

Although no one would argue that this convention will end such matters as hijacking or the international trade in drugs, I think it is another important nail in the coffin that may be used eventually to bury these two crimes against humanity.

Although we have a convention with France dealing with extradition procedures covering many offenses, this convention adds the crime of hijacking to those actions with which both nations will move to see that criminals are brought to justice. In face of the current wave of hijacking and the jeopardy of Americans who are flying, this convention is extremely timely. We must not sit idly by while our citizens and the citizens of other nations have their lives threatened by those who would violate human safety by hijacking airplanes.

In our previous convention with France we had extradition procedures regarding drugs. The convention ratified yesterday adds hallucinogenic drugs and other dangerous drugs. This will help in the worldwide effort to reduce the flow of drugs and to get at those who traffic in these dreadful agents.

I am happy to be one of those who support the action the Senate took in ratifying this convention.

ORGANIZED CRIME AND PROBLEMS OF THE POOR

Mr. McCLELLAN. Mr. President, I read with interest the report in the Washington Post of Friday September 18, 1970, page 1, column 2, that the House Judiciary Subcommittee now considering S. 30, the Organized Crime Control Act of 1969, has tentatively approved a tough version of the bill that passed this body on January 23, by a record vote of 73 to 1. If this report is correct, it is grounds to be encouraged, and I am hopeful that the full committee and the House itself will move expeditiously to complete the processing of this most important legislation.

Mr. President, the passage of S. 30 in the Senate was the product of a bipartisan effort. Senators on both sides of the aisle and those sharing a full range of philosophies contributed to the final product. I am hopeful that a similar effort will be achieved in the House. Too often in the past, vitally needed crime legislation has become embroiled in arid political or ideological disputes. Vitally needed crime legislation has been seen as in opposition to other public programs, including, for example, attempts to bring to bear the resources of government on pressing problems of our inner cities.

In this connection, therefore, I was most gratified to read the recent article by Mr. Eugene Methvin in the September 1970, Reader's Digest, pages 49–55. Mr. Methvin cogently argues that one essential facet of any attempt to deal with the problems of the poor is an attack on organized crime. I recommend his article for close consideration.

I ask unanimous consent that the text of the Reader's Digest and Washington Post articles be printed in the RECORD.

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

[From the Washington Post, Sept. 18, 1970]

CRIME BILL IS TOUGHENED

A House judiciary subcommittee tentatively approved a tough version of an organized crime bill already passed by the Senate, a major congressional victory for the Nixon administration.

The subcommittee added a new antibombing provision that appeared to insure the bill's popularity with the full committee and the House.

HOUSE UNIT TOUGHENS CRIME BILL

(By John P. MacKenzie)

The Nixon administration scored a congressional victory yesterday as a House judiciary subcommittee tentatively approved a tough version of an organized crime bill that has already passed the Senate.

Subcommittee liberals, who had been blocking the legislation while holding out for milder measures, yielded to administration demands for expanding the powers of anti-racketeering grand juries and extra-long sentences for convicted "professional" criminals.

The subcommittee added a new anti-

bombing provision to the ten-title bill that appeared to insure its popularity with the full committee, and the House and, in the view of administration officials, could win Senate acceptance of the entire bill as amended in the House.

This would give President Nixon a bright new trophy in his legislative war on crime to go with his District of Columbia crime law and expected success with pending narcotics legislation.

Opposition led by Chairman Emanuel Celler (D-N.Y.) and based chiefly on complaints that the bill endangered civil liberties, collapsed suddenly yesterday afternoon after four days of hard fighting during which liberals had succeeded in dismantling some sections.

Liberals objected especially to what they called the "runaway grand jury" section giving grand juries investigating organized crime more autonomy and the power to issue reports critical of public officials. After subcommittee Democrats had stricken most of the section on close party-line votes they agreed to restore the section but make the reporting provision apply only to appointed officials, exempting elected ones.

Objections to extra-high sentences when a judge finds a convicted defendant has underworld ties were based on claims that the provision lacked essential constitutional safeguards.

The subcommittee killed most of the sentencing section but then restored it with one added safeguard. It provided that an added jail term for being a hardened criminal not be "disproportionate" to the basic sentence the judge imposes for the crime for which the defendant has been convicted.

The subcommittee voted to make it somewhat easier for defendants to inspect logs of illegal electronic eavesdropping by federal agents when defense attorneys claim that the prosecution is using the fruits of illegal wiretapping or microphone bugging. The Senate version would authorize a judge to inspect them but deny access to the defense "in the interest of justice."

Less controversial sections of the bill would give the federal government broader jurisdiction to prosecute gambling, permit the prosecution to gather pretrial sworn testimony from witnesses whose lives were threatened, and create new civil as well as criminal penalties for organized crime enterprises.

Yesterday's tentative agreement was subject to a final vote that could come on Monday afternoon. Celler had been under heavy pressure from conservatives who threatened to seek a vote on a petition filed Monday to discharge the crime bill from his committee.

[From the Reader's Digest, September 1970]

HOW THE MAFIA PREYS ON THE POOR

(By Eugene H. Methvin)

In Los Angeles, a Mexican-American father of seven takes a job with a Mafia-owned trucking firm—at half the prevailing pay scale. He and the 47 other white, Negro and Mexican-American drivers, all in tough shape financially, are told that the size of their wages reflects deductions credited toward purchase of their trucks, so that they will eventually become independent owner-operators. One driver asks about documentation of this understanding—and gets a smashed face for an answer. Others do not complain for fear of losing their jobs. Over six months, a state investigator finds, the men are swindled out of $24,374 in wages.

In New Orleans, two Negro mothers, displaced from newly mechanized Mississippi farms, take jobs in a food-processing plant. Desperately hoping to escape their poverty they play the numbers lottery run by a friend of their employer, a Mafia associate. Soon the operator is advancing them money to gamble with—at 20-percent interest *per week*. In ten weeks, one owes more than $100 on a $20 loan; the other has little left from her $64 weekly salary after payments.

In a slum section of Washington, D.C., a 56-year-old bakery deliveryman stops at a "Mom and Pop" grocery. As he returns to his truck, a nervous young drug addict levels a pistol and demands money. The deliveryman stutters. The addict fires. The deliveryman falls dead. Arrested later after another holdup, the killer confesses and admits 54 robberies in as many days—of truck drivers, drugstores and grocery stores, all in his ghetto neighborhood. His purpose: to get money to buy dope from pushers. They pass most of the proceeds up the line to Mafia bosses, who import the heroin.

Slum Nightmare. "The most tragic victims of organized crime are the poor," President Nixon told Congress last year. Organized crime, declared the late Martin Luther King, Jr., is "the nightmare of the slum family." Says Sen. Edward Brooke, former Massachusetts attorney general: "The black man has been the victim of crime more than anything else, along with all who live in poverty and lack education. The Mafia moves in, and the black man does the paying."

Racketeers prey upon the nation's urban poor in five principal ways:

1. *Drugs.* Justice Department officials declare that Mafia dons dominate the international heroin traffic. For the estimated three tons of heroin smuggled into the United States annually, addicts must pay a "street value" of over $2 billion. To raise the cash, they must produce two to five times that amount of stolen property—which means millions of robberies, burglaries, muggings, purse-snatchings, shopliftings—or, often, prostitute themselves.

In fact, an estimated 50 to 80 percent of the nation's robberies and other street crimes are drug-related. A New York State narcotics-commission study of 3000 addicts found that their habits cost an average $30 a day, forcing each to steal and "fence" an average $50,000 worth of property per year. The cases are unending: A 29-year-old former Los Angeles addict, for example, admits to burglarizing 5500 homes over five years.

The staggering statistical result: an estimated annual $5 billion in stolen goods in New York, $846 million in Chicago, $500 million each in Detroit and Baltimore, $324 million in Los Angeles, $180 million in New Orleans, $36 to $50 million in Phoenix, Seattle, Miami, Louisville.

The principal victims of these crimes are black ghetto dwellers and other urban poor. A Presidential crime commission found that a person making under $3000 a year is *five times* as likely to be robbed as someone making $10,000 or more a year. A Maryland prison study revealed that convicted addicts were chiefly Negroes, "heavily concentrated" in inner-city Baltimore. Their most likely victims: the grocery delivery boy, the marginal ghetto merchant and trucker, the maid waiting for her bus to the suburbs, or the widow heading for a drugstore with her welfare check.

Then there are the indirect victims. Ghetto stores hit by repeated robberies must pass the cost to their customers or close down. "That means that mothers in those neighborhoods will have to go a little farther for the baby's milk—a major problem when there's no car," says Washington *Post* columnist William Raspberry.

In New York's Harlem and Bronx right now, 60,000 to 100,000 heroin users wander the streets committing violence. Desperate for cash to feed their own habits, pushers peddle special $2 bags of heroin at schools. Postmen delivering welfare checks must travel in pairs. One, knocked down many times, always carries $10 in cash "because addicts get mad if they find less." The state welfare agency must spend $4 million yearly in replacing stolen and forged welfare checks.

And, as always, in the background lurks the Mafia. In Washington, D.C., when authorities charged 71 persons with involvement in a vast dope-selling ring, two New York members of the Genovese Mafia family were found to be at the core of the conspiracy. Court-authorized wiretaps recorded the local ringleader boasting that he had renewed his supply and paid "the Italians" $130,000. Said Sen. John L. McClellan, "In our nation's capital we could see how a Mafia-linked narcotics network was pillaging the Negro ghetto, further debilitating and crippling its poor. Such rings represent one of the most vicious forms of slavery and piracy known to man."

2. *Gambling.* Decades ago, Mafia moguls took over the lottery racket exploiting the misery and hopelessness of ghettoized minorities. In "numbers" or "policy," players bet quarters or dollars on a number from 000 to 999. Winners are determined via a specified number reported in the news media: for example, the last three digits of the total amount bet at a certain racetrack that day. Though the odds are 999 to 1, the payoff is only 400 or 600 to 1.

A single "runner" collects bets from 150 or 200 people: the welfare mother, the $75-a-week commuting maid, janitors, laborers, stevedores. He makes regular rounds of factories, offices, apartments, or mans a "spot" in a barbershop, tenement hallway or eating place.

One top numbers racketeer is "Spanish Raymond" Marquez, a dapper 40-year-old Puerto Rican. Monopolizing the "action" among New York's million Latins, Marquez has compiled a fortune that includes six hotels and extensive real estate. Police estimate that he has 300 runners on the street all the time. FBI agents last year finally nailed Marquez and his top lieutenant on a charge of interstate transportation of gambling paraphernalia. Impounded records indicated that his "banks" handled $75 million a year. Convicted, Marquez drew the maximum five-year sentence and $10,000 fine—but went free while appealing and continued to conduct his racket until he was arrested two months later on new charges.

A New York legislative study found that three out of four adults in the ghettos play the numbers, each averaging a $3-per-week outlay. The investigators identified 20 separate banks in the central Harlem, south Bronx and Bedford-Stuyvesant ghettos. Twelve were "owned" by two Mafia families; the others were run by operators who were presumably Mafia-franchised. The combined take from the three areas was more than $105 million yearly.

3. *Loansharking.* A Presidential crime commission concluded that loansharking is organized crime's second biggest money-maker after gambling. It siphons an estimated billion dollars a year from America's poor. Numbers runners habitually refer hard-pressed bettors to loansharks.

One loanshark worked a 12-block South Philadelphia waterfront neighborhood, calling on dockworkers' wives, who borrowed $25 to $100 for household expenses, paying more than 100-percent interest. Another worked non-professional employes at the Boston City Hospital. He made his rounds on Fridays, lending money at 20 percent for the weekend, returning to collect on Monday—payday.

Sucked in through desperate need or foolhardy gambling, some borrowers try to dodge the exorbitant debts—and wind up like a stevedore who had a hand burned off with a blowtorch, or a 65-year-old widow who was beaten mercilessly. Loanshark victims are often forced into prostitution, dope peddling or other crime. A beauty-salon attendant is

pressed into spying for a burglary ring, reporting on patrons' jewelry, apartment numbers, husbands' working hours and maids' days off. A struggling luncheonette owner becomes a bookmaking and numbers front. A stevedore must pilfer and hijack valuable shipments.

And those who don't cooperate face terror. Sam DiMaggio, 57, peddled produce from a truck to Detroit's ghetto grocery stores and small restaurants. The 1967 riot left him with uncollectable accounts and a ruined business. He lost his truck, got into debt to loansharks and could not meet the payments. On March 28, 1968, DiMaggio was repairing a kitchen table while his wife cooked supper. Robert Dunaway, a Mafia enforcer, knocked and ordered DiMaggio to accompany him. Shaking, DiMaggio kissed his wife and went. Two hours later, a car, headlights out, drove up, and DiMaggio was dumped on his lawn, a bloody pulp. "I'm all busted up," he whispered. "I'm a goner. Five guys beat me up." He died a few hours later.

4. *Labor racketeering.* Nowhere is Mafia infiltration of the labor movement worse than in New York City. The immediate victims usually are the unskilled and semi-skilled, unaware of or afraid to exercise their legal rights. Last year the Justice Department launched prosecutions of top officers of the Restaurant Workers' Local 11, whose 8500 members—more than a third of them Negro or Puerto Rican—work in chain restaurants, luncheonettes and soda fountains in New York and Connecticut. President Fred Ferrara and another officer were charged with pocketing $40,000 in union funds and profiting handsomely from a "sweetheart" contract. A drugstore chain bought its coffee from a supplier who paid "commissions" to the union officers, who in turn allowed the chain easy contract terms—all at the expense of the poorly paid drugstore-counter girls.

The New York State Insurance Department also found that Ferrara and other union trustees squandered $138,000 of their members' welfare and pension funds. The accountant for all union funds was a Mafia associate under multiple indictments for raiding other union welfare funds. When rank-and-filers tried in 1969 to clean house, they came up against Ferrara's "special assistant," Joe Agone, a mafia *capo* of the Genovese family with 19 previous arrests and 11 years in prison for armed robbery. He is charged with threatening to beat up the luncheonette counterman who dared to run against Ferrara. The U.S. Department of Labor is suing to set aside the election on the ground that members were deprived of a free ballot.

In 1968, the State Investigating Commission exposed systematized looting in the 7000-member New York locals of the Laborers' International Union. Via electronic bugging, police had learned that a mafia "soldier" controlled one local and ran its daily affairs under boss Carlo Gambino's instructions. Union members, under sweetheart contracts, were forced to work for wages below union scale. The welfare and pensions funds were looted; they had to go into state-supervised receivership. Union stewards were allowed to run loanshark rackets and gambling on job sites. Mafia rule was enforced with threats, shootings, even bombings.

The commission concluded: "The interest of the laborer was consistently disregarded, while the racketeers exploited every opportunity for themselves."

5. *Corruption of officials.* After Newark's bloody riot killed 26 persons in 1967, a special governor's commission declared that a leading cause was the "widespread belief that Newark's government is corrupt." The report triggered a two-year grand-jury probe, which criticized lack of gambling-law enforcement and produced indictment of Newark's mayor and other top officials, along with scores of gambling figures and Mafiosi, on charges including extortion, bribery and kickbacks.

An engineer whose company did millions of dollars' worth of work for the city testified that Newark's then assistant director of public works introduced Mafia *capo* Anthony ("Tony Boy") Boiardo to him as "the man who really runs this town." Boiardo ordered the engineer to kick back, in cash, ten percent of all contract payments, "because there are a lot of mouths to feed at City Hall."

Thus were untold millions in scarce tax dollars siphoned from badly needed school, housing and welfare programs. Little wonder that, in the explosive weeks before Newark's 1967 riot, pickets paraded before City Hall, distributing leaflets saying: "We're tired of our Mafia government!"

Atlanta's biggest numbers ring, siphoning $5 million a year from poor Negro neighborhoods, gained such control in the police department that honest officers had to turn secretly to the state attorney general to clean house. Charlie Cato, the top racketeer, was a black, but investigators found that he received regular visits from Mafia figures from Miami and New York. One police lieutenant told state investigators that Cato paid so many top officers that "he outranks me."

Using wiretaps, the attorney general indicted Cato and 15 other top-echelon racketeers, including two policemen. "The police kept bringing these old Negro women into my court with a few lottery slips, but we never saw the big syndicate boys," said Judge Dan Duke. "Enforcement of the lottery laws had become a class operation in which the underlings and poor were prosecuted and those in the top echelons operated from a privileged sanctuary outside and above the law."

Criminologist Donald R. Cressey, author of *Theft of the Nation,* found that in a single year 90 Harlem numbers spots paid police about $2.5 million for "protection." And after three days of listening to Harlem citizens' testimony, a New York legislative committee concluded: "There is a direct relationship between civil disorders in the ghettos and the mounting anger of the ghetto resident at the society that fails to protect him from the depredations of organized crime."

Crushing Burden. In his *Autobiography,* Malcolm X, a former numbers racketeer himself, wrote: "Teen-agers in the ghetto see the hell caught by their parents struggling to get somewhere. They make up their own minds they would rather be like the hustlers whom they see dressed 'sharp' and flashing money. So the ghetto youth become attracted to the hustler worlds of dope, thievery, prostitution, general crime and immorality." In three sections of Chicago, youthful offenders were asked recently, "What is the occupation of the adult in your neighborhood whom you most want to be like in ten years?" Eight out of ten named some aspect of organized crime.

The cumulative burden of organized crime on the nation's urban poor is incalculable. In 1968, for example, experts concluded that organized crime's gross money takeout from three New York City ghettos totaled $70 million more than the state welfare department's $273 million in expenditures in the same areas! A Congressional study group of 22 Republican Representatives calculated that organized crime's annual *profits* from gambling were $6 billion—three times as large as 1968's war-on-poverty spending. In 1967, under a special anti-poverty program, the Small Business Administration loaned $50 million to marginal businessmen concentrated in urban poor areas; meanwhile, loansharks siphoned out $350 million.

"This money can come only at the expense of the health, food, clothing, shelter or education of the poor," the Congressional study group stated. "Continued indifference to organized crime threatens to turn government welfare and anti-poverty programs into a subsidy for society's most notorious predators. *A society concerned about poverty must be concerned about organized crime.*"

These are words to think about. For even now Congress has failed to approve vital crime legislation requested *16 months ago* by President Nixon. The Senate passed the Organized Crime Control Bill, 73 to 1, early this year. But it has been stalled in the House of Representatives as honest civil libertarians, racket-affiliated lawyers and organized-crime forces have battled for drastic revisions or outright rejection. It is to be hoped that those politicians who profess concern for our poor and the crisis in our cities will soon realize that one powerful solution is before them—*all-out attack against organized crime.*

PRESIDENT NIXON'S VISIT TO KANSAS STATE UNIVERSITY

Mr. DOLE. Mr. President, we are all aware of the great success of President Nixon's visit to Kansas State University, September 16.

The significance of this event has been reported and analyzed by many commenators. A particularly interesting analysis of the President's lecture was delivered by Eric Sevareid on the CBS Evening News on September 16. I ask unanimous consent that Mr. Sevareid's comments be printed in the RECORD.

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

EXCERPT—CBS EVENING NEWS WITH WALTER CRONKITE

SEVAREID. Three years ago this reporter was sitting by Alf Landon's fireplace and the Kansas patriarch was saying he'd like to live long enough to see a good Republican President elected. At that point he favored George Romney of Michigan. But he's content; there he was today, 83 years old, introducing a Republican President to the college he's adopted.

No two approaches to public life could be more different than the Landon approach and the Nixon approach. They say in Kansas that political ambition is like a snake's tail—it doesn't die till sunset. That was true of Nixon, who fought down his defeats in a spectacular comeback, pre-eminently untrue of Landon. After his overwhelming defeat by Roosevelt in '36, he could have easily gone to the Senate. But, he said, here's my two little kids; what kind of education would they get, dragging them back and forth between Washington and Kansas. Anyway, he said, the Republican party ought to have one man free of ambition, free to speak his mind.

He's been speaking his mind now and then ever since, and in terms of public affection and respect, Alf Landon too has made a spectacular comeback. Historians have had to revise their estimates of him. The supposed reactionary mossback turned out to have been, all the time, an open-minded, liberal-minded progressive, for years privately urging his party to get in touch with the times. He'd still go further and faster than most Republican leaders even today. He would, for example, recognize Red China like a shot and try to get her into the United Nations.

So there isn't all that much of a gap between the patriarch and those healthy looking students he introduced the President to today. This transaction was a sharp reminder, for all who tend to generalize about them, that college students vary tremendously in their life style and outlook.

Kansas State has a few militants and

nihilists who want to kick over the whole system, but too great a number come from farms and small towns, youngsters aware how their parents had to work and save to send them to college, young people who worked themselves to get there and still work to stay there. They tend to regard higher education as a privilege to be earned, and not a right to be demanded. All told, Mr. Nixon's kind of college audience, and he made the most of it, the few hecklers serving his purpose by adding just a pinch of spice to the dish.

ADDRESS BY SENATOR MUSKIE TO NEW ENGLAND PRESS ASSOCIATION

Mr. EAGLETON. Mr. President, the junior Senator from Maine (Mr. MUSKIE) spoke recently to the annual fall meeting of the New England Press Association at Portland.

Senator MUSKIE described the shared responsibilities of politicians and the news media in helping build informative and constructive political campaigns. His remarks have great relevance this fall. They reflect Senator MUSKIE's thoughtful, calm, and rational approach to the serious problems the country faces today. I ask unanimous consent that they be printed in the RECORD.

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

EXCERPTS FROM THE REMARKS OF SENATOR EDMUND S. MUSKIE TO THE NEW ENGLAND PRESS ASSOCIATION, SEPTEMBER 19, 1970

Politicians and the press are, I suppose, natural antagonists, and yet, in a sense, indispensable to each other.

We seem to have a knack for raising each other's hackles.

Tonight may be no exception.

Nevertheless, I thank you for inviting me this evening.

Political campaigns are a contest for political power.

They ought to be more than that if political power is to be effectively shared with the citizens of a free society.

They ought to be educational experiences for voters and politicians alike if we are to understand—the problems we face; the objectives to be sought; and the policy choices open to us.

The politician's responsibility, then, whether in or out of a campaign, is—to illuminate the issues; to inform the voters; to educate himself.

Newspapers have a similar responsibility.

It is this responsibility—which we share—that I would like to discuss briefly tonight.

I am particularly glad to be back in Maine, after traveling the past day and a half to California and back for people who had asked me to help them this election year.

Of course, we made our brief trip across country by jet—never stopping long enough to walk the streets of the cities . . . or to wander through the countryside . . . or even play a round of golf.

We couldn't fully appreciate the land and the people on it. And the distances we covered reminded me—as we came here this evening—of something Erwin Canham once wrote:

"The day of the printed word is far from ended. Swift as is the delivery of the radio bulletin, graphic as is television's eyewitness picture, the task of adding meaning and clarity remains urgent. People cannot and need not absorb meanings at the speed of light."

Nor, might I add, at the speed of jet planes.

There is a dimension to the news that almost no medium but the written word can offer.

For it is a medium that encourages reflection.

It assaults no one's ears.

It places no time limit on our comprehension.

It requires no twisting of a dial.

As important as radio and television newscasting is, the newspaper offers us something special—the luxury of detail . . . of intellectual exercise . . . of time for contemplation.

At its best, the newspaper lives up to what Wilbur Storey of the Chicago *Times* said of it more than a century ago:

"It is a newspaper's duty to print the news, and raise hell."

Recently, of course, the press has been harvesting some of what it is supposed to raise.

I do not intend to adopt the rhetoric with which the press has been attacked—

—to single out those articles which may annoy me from time to time;

—or to specially chastise the newspapers of any single region of the country.

But I do suggest there is some merit to the notion that the press does not always meet the high standards it expects of others—especially those in public life.

We ought to understand—when we speak of freedom of the press—that what is meant is not freedom of the news media to decide what is the truth, but the right of a free people to have access to the truth.

We believe in a free press as one of our fundamental liberties—not because we believe the press is always accurate—or always fair—or always objective—or always balanced, in its presentation of the news, or in the expression of its opinions; but because we believe that if the press is truly free, the truth, in the long run, somehow emerges.

We understand that the press—owned, operated, and managed by human beings—is subject—as are politicians—to human failings.

The press can be—and sometimes is—reluctant to admit error.

It can—and sometimes does—leap to unfair editorial conclusions—on the basis of incomplete information.

It can—and sometimes does—grind its own political, economic and social ax—at the expense of the truth itself.

It can—and sometimes does—use its monopoly position in many communities—to abuse those with whom it disagrees.

It can—and sometimes does—in such situations, seek—not an enlightened public opinion, but a public opinion prejudiced by disproportionate exposure to its own point of view.

To be truly free—in terms of the right of free citizens to obtain the truth—the press should undoubtedly be free from government control.

But that is not enough.

For it should also be free from the restrictive control of those who may be tempted to use their power of control to advance their own narrow interests or points of view.

If both these objectives are to be achieved, they impose a responsibility to use that freedom to advance, not restrict, the free flow of news and ideas—to present them in a balanced, not a biased, way; to be zealous in avoiding unjustified assaults—intended or unintended—upon the integrity and reputations of those with whom it disagrees.

And it is no defense to say that those of us who raise these points are subject to the same failings—as we are.

In brief the press, and politicians, should regard their human failings—not as excuses to say whatever they please—but as shortcomings to be overcome.

Certainly, politicians sometimes try to shift the responsibility for their own shortcomings to the press.

They are not always as careful as they should be in presenting their views.

They are not always as fair as they should be in appraising their responsibilities.

And frankly, you are right when you criticize these tendencies.

I do not doubt that the editor's task of selecting the news and deciding the play and space to give it may be the most difficult test of intellectual honesty in the land.

Still, that test must be recognized. It must be taken. And it must not be failed.

This caution happens to come in the fall of an election year—a time when I believe the press must incite people—to reflect; to choose; to cast their ballots.

These points are as relevant to the community weekly and daily as they are to the metropolitan press.

Indeed, they are essential to the very integrity of grass-roots journalism—journalism of the type that produced the year's winning editorial in the Newport *Argus-Champion*—on making New Hampshire's woods more secure.

It is this kind of communication we must foster—communication that is direct . . . that is uncomplicated . . . and that educates people about the things that matter.

Having said this much about the press and my view of its responsibilities, let me be as frank about my own profession.

Just as you are indispensable to a free society, so is the practice of the arts of politics by a free people—motivated to become involved in the decision-making processes of that society.

And yet, the politician is universally regarded as being apart from his people, rather than of them. Why? Let us consider our campaign behavior.

All too often, the quality of the political dialogue in American election campaigns is a disgrace to the Republic. And this campaign—from many of the early signs—is likely to reinforce that judgment. Consider some of the manifestations—the reaching out for a "cheap" headline in order to attract attention; the distortion of an opponent's views in order to make them more vulnerable to attack; the shaping of campaign advertising to play upon the baser instincts of a voter and divert his attention from the merits of an issue.

As the campaign progresses, and as its tempo escalates, the total impression is of strident voices, flashing images, meaningless phrases, and total confusion.

Is there no way for politicians to treat their constituents as rational human beings who would truly like to know the pros and cons of every issue?

Is there no way for citizens to get a balanced exposure to the facts and the judgments which they should have to make intelligent decisions?

It is possible to generate such a campaign dialogue in such a way as to attract the attention and the interest necessary to assure a turnout at the polls?

Such a way will not be found unless you and we find it.

The fact is that politicians indulge in the kind of campaign practices to which I have alluded in order to get news coverage.

The fact is that the charge and countercharge kind of campaign does get more headlines.

The fact is that the rougher and tougher and nastier a campaign becomes, the more attention it does get from the press.

Our challenge—and we do share it—is to evaluate the level of political dialogue to the uplifting clash of ideas, the illuminating cross-fire of constructive and intelligent disagreement, the clear identification of the choices available to the voter.

Anticipating the attention this speech may get from those who may misread it, let me make three points clearly:

I am not, by indirection, criticizing anyone specifically.

I am not, as some headline writers may be tempted to suggest, "Attacking Politicians and the Press.

I am focusing on weaknesses in which politicians and the press indulge themselves, in the hope that by doing so, I may contribute to some improvement in the performance of each.

I believe such improvement to be essential to the best interest of our country.

When I was given the opportunity to campaign in other parts of the country in 1968, I wondered whether or not it would be possible to talk to people elsewhere in the same way that I have always to my own people here in Maine.

I found that Americans everywhere want to preserve their own identity . . . to protect their own potential.

They want to believe in this country again . . . to dream of a better future . . . to enjoy the life we have.

And they want plain talk . . . unevasive talk . . . and politicians who listen to them, which isn't a bad idea either.

And yet, over the past several years, the ability to communicate effectively seems to have broken down in many parts of the country.

People have a sense of drifting apart . . . of being dominated by events beyond their control . . . of facing challenges that our institutions seem unable to meet.

And so they are tired of hearing politicians talk.

They find rhetoric far outdistancing performance.

As a result, people are divided at a time when they should be working together.

They are suspicious of each other at a time when they should be learning to understand each other better.

And their spirit is low at a time when their courage is needed as never before—the courage to try new directions for peace; for economic growth; for mutual tolerance.

At times, we seem to be on the verge of testing out Thomas Jefferson's proposition:

"Were it left to me to decide whether we should have government without newspapers or newspapers without government, I should not hesitate for a moment to prefer the latter."

I suggest, however, that both a free press and a vital government remain equally necessary . . . as distinct and independent expressions of the conscience of the nation.

But there is more than a need for friendly antagonism between the press and the President—or unfriendly antagonism, for that matter.

There is more than a need to reaffirm the fundamental value of a free and vigorous press, although that too is important.

There is in 1970—and perhaps in the immediate years to come—a need for the press to help reassess the values we share . . . reaffirm the potential of Americans working together . . . and rekindle their faith in what government can help them accomplish.

That does not mean printing only what is right about America.

Of course, there is much that is right about America.

If there were not most young people would not be seeking to improve it; most disadvantaged people would not be trying to find a place in it; and most of us who have known its opportunity would not be working to perserve it.

One of the things that is right about America—that is the press has historically been associated with—is the freedom to criticize the things that are wrong; to point out what needs to be done; to arouse the public sufficiently so that their representatives get things done.

I suggest that being a gadfly remains a vital function for the press—despite those who would rather talk of the press in terms of the horsefly.

Thomas Wolfe once wrote:

"I do not believe that the ideas represented by 'freedom of thought,' 'freedom of speech,' 'freedom of press' and 'free assembly' are just rhetorical myths. I believe rather that they are among the most valuable realities that men have gained, and that if they are destroyed men will again fight to have them."

Whether those realities remain tangible in our society . . . in our lifetime, and beyond . . . will depend to a great extent on your own conscientious and dedicated and enduring efforts.

Thank you.

May I add this thought. As I travel about this country I find that all Americans of all descriptions and all circumstances share two concerns.

First, they like what Ameria has stood for; they would like it to continue to stand for those things, and they believe that this is the only way to build a society which has a place in it for everyone.

Second, there is a doubt that other Americans, who are different, share that same view of their own interest.

To bridge the gap between the two is the great challenge that faces us in this country. I think it can be met. I don't think it will be met unless politicians and the press work at it in the way I have suggested.

DOOR COUNTY, WIS.—SHOW IN COLOR

Mr. PROXMIRE. Mr. President, Door County in Wisconsin is one of the country's really beautiful areas. It is especially so at this season. The moisture wafted from Lake Michigan on the east and Green Bay on the west combines with the crisp coolness of the nights to enflame the leaves of the many trees that grace the narrow peninsula that is Door County.

The beauty of Door County in the fall makes it an attraction in the fall as well as in the summer of the year. That attraction has not missed the Christian Science Monitor.

Mr. President, I ask unanimous consent that an article written for the Monitor by Maidi Pritchard be printed in the RECORD.

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

OCTOBER IN WISCONSIN—DOOR COUNTY BECKONS MOTORIST

(By Maidi Pritchard)

Fall is one of the most colorful times to visit Wisconsin's Door County. We like the middle of October best—the time of the "turning of the leaves." Then the county puts on its most glorious show in color.

Easily accessible from Chicago, Door County yet seems to be far away. On a peninsula, jutting into Lake Michigan, it is water and woods, sandy beaches on the west and rocky shores—washed by temperamental storms—on the east. Its air is clean and fresh. It is criss-crossed by excellent roads, but there is little traffic in October.

Door County stretches north from Green Bay to Washington Island and Rock Island—both still unspoiled and wild—can be reached by ferry. Sturgeon Bay, the county seat so named for the large number of sturgeon once caught there, today is a prosperous center of fruit canning and ship-building.

October is the best time for motoring, for hiking and picnics. For enjoying the brilliant golden-yellow of the maples above the blazing red sumac. Mixed woods of oak and aspen are accented by firs, pines, and the green of cedars. Lovely clumps of birches, their glistening white bark bursting, catch the autumn sun.

There are strawberry patches and apple and cherry orchards. This is a land of Holstein cattle and Black Angus, of big barns, winding roads, few billboards, and deep silences. Small wildlife and plentiful deer do not panic at sight.

The natives respect themselves, respect each other, and believe in cleanliness and hard work being next to Godliness. Their children still bicycle in safety to games and picnics in the fragrant woods or in sunny meadows. There are safe rocky shores or sudden sandy coves in which to play. Even at the height of the season there is little traffic.

Motoring is a delight because the main and county roads are well marked, the latter with all letters of the alphabet, from "A" to "ZZ." We can safely explore the smallest roads, knowing we will not get lost nor get stuck.

Three distinct ethnic groups settled Door County. They still preserve and live by their old traditions. The Indians came early and have almost disappeared. The few who remain are mostly Menominees. They still bow to their titular head, Chief Roy Oshkosh. There are traces of Ottawa and Huron tribes. And there is one thriving Indian trading post.

In the southeastern part of the county is the largest settlement of Belgians in the United States. Names like Brussels, Kolberg, Namur and Rosiere tell of the love and perhaps homesickness of the earlier settlers, who came from their highly civilized country to make their home among Indians.

But the Icelandic settlers have made the strongest and most lasting impact. They have created a bit of Scandinavia in Door County. There are Norwegians, Swedes, and Finns, and they have imposed their values, their way of life and their art on the land.

In spring thousands of fruit trees in bloom turn the orchards into clouds of pink and white. In summer, vacationers sail, fish, play golf, and enjoy camping. In July and August, "egg-heads" flock to the excellent theater put on by the Peninsular Players. In September Dr. Thor Johnson, founder and conductor of the Peninsula Music Festival, conducts his famous concerts at Fish Creek.

At Ellison Bay, near the rugged cliffs of the north, the Wisconsin Farm Bureau conducts summer workshops, taught by outstanding teachers from Midwestern universities, colleges, and art schools. Students of all ages and background enroll in courses in American theater, political affairs, stained glass artistry, Great Books courses, editorial writing, poetry, weaving, and contemplation. The courses are always filled. There are excellent hotels, motels, and guesthouses catering to every purse and taste and bursting at the seams.

But by October these visitors are gone and only those are left who love the county for its beauty. Then it is a bit late for camping or sailing, but just right for motoring and for enjoying the "turning of the leaves."

October 10 usually marks the start of the Swedish Fall Festival at Sister Bay, with its famous "fish-boils," that favorite stout meal of men who came here over a hundred years ago to cut wood and build ships. Everyone gathers around huge iron kettles in the street.

There, over open fires, all kinds of fish, but predominantly lake trout, are boiled together with potatoes. The pungent smell of woodfire and good food hangs in the crisp

autumn air and keeps us warm even on cold days.

There are farmers' markets, handicrafts exhibits, puppet shows, clowns, and pony rides. Helicopters drop table-tennis balls to the scrambling children. The Festival winds up several days later with the great parade, in which young and old take part with equal gusto.

Even the entire fire department joins in and everyone outdoes everyone else in wearing funny and outlandish costumes and driving ancient rigs. The air is full of happy shouts, laughter and stamping feet.

Your day is made if you can get into one of the two popular Swedish restaurants. You fill up with boiled or fried fish, with Swedish meatballs, with paper-thin Swedish pancakes covered with butter and lingon berries, and all accompanied by delicious Swedish limpa bread, hot from the oven.

The waitresses have wonderful Nordic good looks. Their long flaxen hair may fall across their faces and cover their clear blue eyes, and their miniskirts may be very short, showing somewhat sturdy legs. But they are cheerful and friendly. They smile and laugh above their heavily laden trays. They are not afraid of hard work nor of showing that they are having a wonderful time.

They minister to their elderly customers with the deference due to revered grandparents. Life here is good—unhurried and thoughtful. The girls know it and we may share it if we care for their simple style.

Before leaving the county, we take a long last look at the Boynton Chapel, set in 325 acres of untouched forest. This is a replica of an elaborately carved 15th-century Norwegian chapel near Maxwelton Braes. A broker and his wife from Highland Park, Ill., built it with their own hands in seven years. They left the chapel and the land in trust to Lawrence College. This is as fine a memorial to the spirit of Door County as one can imagine.

We always return from Door County recharged, better able to face our mixed-up times. We have not escaped to another Walden, but have gone back to the roots of our nation's strength. To nature, hard work, and creative living with people whose values are sound.

SMALL-TOWN AIRLINE SERVICE CUT

Mr. PEARSON. Mr. President, the New York Times for Sunday, September 20, contains a front-page story on the subject of air service to small towns.

I think it significant that one of our Nation's leading newspapers saw fit to make this important subject a matter of front-page importance.

This story very correctly notes the history of the present crisis in transportation in small towns across the country. It very correctly notes how the local air carriers developed from "feeder airlines" serving small communities to "regional air carriers" flying longer hauls between medium and large size cities.

It perceptively describes the problems experienced by third level or commuter air carriers in serving these abandoned communities.

But perhaps most importantly it accurately reflects how poor transportation can become a true hardship to any community. Air mail letters now take a day longer to get to Lewistown, Mont. The local florist now finds her flowers wilted because her shipments must travel by bus. The local fire department was disabled for 4 days because it took that long for a bus to bring in a needed spare part. The local hardware store owner now has to drive a considerable distance to seek out salesmen because they would not come to Lewistown any more.

In short, I commend this article to the Senate because it reflects the severity of this gathering crisis in "Small Town, U.S.A."

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:

SMALL TOWNS LEFT ISOLATED AS AIRLINES CUT SERVICE

(By Robert Lindsey)

LEWISTOWN, Mont., September 17.—Mayor Walter Mondale used to boast that he could live the good life in this small town in central Montana and enjoy the big cities, too. The outside world was never far away so long as the Frontier Airlines plane put down here every day.

Then last April 6 the airliner made its last stop, and Lewistown joined a fast-growing number of small towns from New England to the Far West that have been abandoned by both railroads and airlines.

"It's like we were cut off from the world," the Mayor said wistfully this morning as he looked out across the town's empty, silent airport. "We can't even get salesmen in here to sell us things any more."

At a time when airports in the nation's big cities are often choked by too much air traffic, scores of small towns like Lewistown have lost their only airline service. Over the last five years, airlines have stopped serving 66 communities. In the last year alone, Williston, N.D., Rutland, Vt., Winona, Minn.—altogether, 22 small towns have lost their air service.

The nine regional or "local service" airlines that provide most of the service to small town America contend that despite Federal subsidies—$36-million last year—passenger demand in many areas is too weak to offset fast-rising operational costs.

At the moment the Civil Aeronautics Board is considering airline applications to suspend flights at eight more towns. Industry experts estimate that the subsidized regional airlines would drop 100 of the communities that they still serve if the board would let them.

In some ways, the airlines' efforts to cut back on service parallel those of the railroads over the last 20 years. But while the railroads have worked hardest to eliminate long-distance trains, which they say produce the highest losses, the airlines have sought to eliminate short-hop service.

The airline cutbacks often occur at places that need air service badly. Lewistown is an example. It is nestled in the folds of a rolling, green plateau 710 miles north of Denver and 105 miles east of Great Falls, Mont. Long ago it was a frontier cavalry outpost, and it still has the look of a slightly modernized Western movie set.

Lewistown had a gold rush in the eighteen-nineties, an oil boom in the nineteen-twenties and a missile boom in the nineteen-sixties—when the Air Force built silos for 150 Minuteman missiles amid the straw-colored plains just outside town where 100 years ago the Sioux, Blackfeet and Gros Ventres hunted buffalo.

But now the town's economy is stagnant. It is based mostly on beef, wheat and barley, and mechanization on the region's big ranches (which run 25,000 acres and larger) and farms has cost the town hundreds of jobs.

Just this week the town fathers who have been trying for years to lure industry to Lewistown, learned from new census figures that the town's population dropped from 7,500 to 6,500 in the last decade.

"If we don't get better transportation to the large cities, our town is going to die," said Mayor Mondale, a soft-spoken lawyer with white hair.

"This is a great place to live," he went on, "but it's the guldangedest place in the world to get in or out of. People first homesteaded the town because the railroad came in here in 1903. But the railroad took away our last passenger train in 1960 because they said we had good air service. Without an airline, how are we ever going to get industry in here?"

IMPACT IN HUMAN TERMS

In Lewistown, the impact of the airline cutback on the daily lives and habits of the townsfolk was immediate and sometimes severe:

Letters carrying air mail stamps now take a day longer to reach residents.

Betty Meile, a florist who gets her roses from Salt Lake City now finds her flowers brown and wilted because the shipment has to come by bus.

Fire Chief Charles Pentacost's largest pumper was out of action for four whole days because it took that long for a bus to bring in a needed spare part from Denver.

The Curtis Breeders Association held a convention at the Yogo Inn and two out-of-town speakers missed their engagement because they had to come by car instead of by plane, as they had expected.

A hardware store owner now has to drive all the way to Great Falls to see wholesale salesmen because, without air service, they won't come to Lewistown.

Bob Brassy, the manager of the Intermountain Bus depot, has suddenly become an important figure to the town, its chief contract with the outside world and as such a focal point of local hopes and disappointments.

"Day in and day out I get chewed out because the stuff on the bus takes so long," he said, not too unhappily. "They complain about not having air service; I smile, but I know it rings my cash register."

NIXON PLEDGE RECALLED

The bus business may be up, but the loss of air service can't help but damage the town's economic welfare over the long run, and Lewistown's problems are springing up throughout rural America.

In fact the deteriorating state of small town air service, some officials believe, may jeopardize a national goal defined by President Nixon in his State of the Union message last Jan. 22. The President said then that he would work to "create a new rural environment that will not only stem the migration to urban centers but reverse it."

But officials of many predominantly rural states say that to attract large numbers of people there must be jobs and industry, and they insist neither industry nor city dwellers will emigrate to the hinterlands unless there is good transportation.

"Industrial concerns simply will not build a new plant in a location which is isolated from the home office, the key financial centers, and its suppliers and customers," Paul E. Burket, Nebraska's director of aeronautics, told a Senate subcommittee investigating the problems of small town air service last spring.

The Civil Aeronautics Board and the aviation subcommittee of the Senate Commerce Committee, which conducted extensive hearings on the situation this year, have been seeking new approaches to maintaining service in the towns that now have it and to providing new service for the communities that want it.

TOTAL OF $55.6-MILLION LOSS

After the local service airlines reported that last year they had lost a total of $55.6-

million above the $36-million subsidy, the Aeronautics Board recommended a steep subsidy increase this year—to a total of $57.8-million. Legislation that would provide the extra aid is pending in the Congress.

The local service airlines—Air West, Allegheny, Frontier, Mohawk, North Central, Ozark, Piedmont, Southern and Texas International—serve 544 cities. They are the only airlines now subsidized by Washington. The 11 "trunk," or long-haul airlines such as United and Trans World, which serve 61 cities, stopped receiving subsidies in the Nineteen-Fifties' as they became profitable.

Even if it is approved, the proposed additional subsidy for the current fiscal year is not regarded as more than a temporary answer to the small towns' problems.

The problem is rooted in economics, or as one local service airline president put it: "No airplane has been invented which is well suited to economical operation on short hops at low density air traffic points."

In making its case for dropping service here and seven other Montana and North Dakota cities that had been on a 2,200-mile round-robin circuit, Frontier contended that in 1969 it lost $667,000 on the route—even though it received a $449,000 Federal subsidy.

A Frontier executive said: "For every passenger we carried who paid a $20 fare, the Government was paying $20 in subsidy and it was costing us at least as much." Frontier said it was carrying an average of fewer than three passengers on the 50-passenger Convair turbo-props—so it used to serve Lewistown.

Many aviation leaders believe that small "air taxi" operators, using two- to nineteen-passenger planes, be a sound approach to solving the problem.

In 44 of the 66 cities that have lost their regular air service, the Civil Aeronautics Board allowed airlines to suspend flights only if an air taxi line agreed to provide service to an airport with conventional air service.

At many points around the country, especially in New England, local officials say the substitute service has been satisfactory.

But many other communities including Lewistown are unhappy because they say the substitute service tends to be undependable, the small planes are uncomfortable and the tickets are too expensive.

Air taxi operators—there are at least 1,500 in the country, including about 165 that offer some kind of scheduled services—is often shaky and many experts are concerned about safety.

The air taxis operate under much less stringent Federal safety standards than regular airlines, and, as a whole, the air taxi industry has had a poor safety record.

Between 1964 and 1968, the rate of fatal accidents per 100,000 hours of flying was 12 times higher for air taxi companies than for the regular airlines. During the first half of this year, air taxi fatal accidents increased by more than 80 per cent; over the same period in 1969; 65 persons died in 22 accidents.

The Defenders of the "Commuter" airline industry, as the new group of scheduled air taxi companies calls itself, say that most of the accidents have involved underfinanced "fly-by-night" operators. They say the scheduled air taxi lines have had a much better safety record, although there are no Federal statistics yet to back up their claim. The Federal Aviation Administration has recently proposed new regulations that would make the air taxi lines meet more of the safety standards of conventional airlines.

When Frontier stopped its service at Lewistown, an Arizona air taxi company, Apache Airlines, began to stop here once a day. But, Donald Browne, president of the First National Bank here said:

"Hardly anybody uses it because the schedules make it difficult to connect with flights out of Great Falls, and you can't depend on it. And for what they're charging, $27, you might as well drive to Great Falls."

In the summer, he said, it is a two-hour drive but in winter it can take much longer.

The efforts of local service airlines to abandon small towns have raised questions about the wisdom of decisions made by the airlines and the C.A.B. five years ago. Originally, the nine airlines were "feeder" services, carrying travelers from towns like Lewistown to larger cities where there were flight connections to New York, Chicago or other cities.

DECISIONS QUESTIONED

In recent years, they have experienced a dramatic metamorphosis. In 1965, the aeronautics board began a program intended in part to reduce the Government subsidy, then running $65-million. The heart of the program was to allow the regional airlines to fly longer and more profitable routes. The idea was that longer nonstop routes would, in effect, subsidize losses at the small towns. But things did not work out that way.

The airlines began a rush to buy expensive new jets for the new routes. In five years, their collective debt increased from $110-million to $550-million. It was a time when interest rates were skyrocketing. The airlines thus got caught in a squeeze compounded by inflation, their agreed-to reduction in subsidies, high interest, and failure of some of their new routes to pay off as expected.

Instead of subsidizing services that the airlines had been created to provide, the new routes added pressure on the lines to get out of many of the small towns.

Wherever the responsibility for today's decline in small town service lies, Aviation experts agree that it can be reversed only by a national effort.

Secor D. Browne, chairman of the Civil Aeronautics Board, says that air transportation "should not be denied citizens who live outside the great metropolitan areas for whatever reason—logistics, legal or economic."

But, he added in a recent interview in Washington, "Sombody is going to have to pay for it. Who pays for it is a decision we as a country have to make."

Meanwhile, the citizens of Lewistown and many other small communities are distressed at what they fear is impending economic hardship and possibly even the need to pull up stakes and find a home somewhere else.

"It's getting harder and harder to keep towns like ours alive," said Leon Jacobs, an airport commissioner here and owner of the E-Jay-S sporting goods store. "Without air service, we're drying up and dying away."

FINAL SCHOOL LUNCH REGULATIONS IMPROVED

Mr. McGOVERN. Mr. President, on August 31, 1970, the U.S. Department of Agriculture issued the final regulations for the national school lunch program. I am happy to say that these regulations are a vast improvement over the proposed regulations announced by USDA on July 17, 1970.

When those proposed regulations were issued, I commented on the floor of the Senate that they "clearly do not serve to fulfill the intent of Congress" which was to facilitate the provision of free and reduced-price lunches for all needy children. I inserted at that time into the record letters to Secretary Hardin from myself and other interested persons which spelled out the principal objections to the proposed regulations. Most important among those objections was an implication in section 245.3 that local school authorities were to have discretionary authority in the use of eligibility criteria, other than simply income—family size standards. Specifically, that section stated that—

> School authorities may include such additional criteria as they deem necessary to assure access to lunches by children (unable) to pay the full price of the lunch.

In my letter to the Secretary, I objected to this, saying:

> Under no circumstances shall those unable to pay be charged for their lunches. This needs to be made clear.

I recommended a change to the effect that school authorities shall use such additional criteria as is necessary to assure access to lunches by children unable to pay the full price of the lunch.

This recommendation was also made by Miss Jean Fairfax, chairman of the committee on school lunch participation, which produced the notable work, "Their Daily Bread," Mr. Ron Pollack, director of the Columbia University Center on Social Welfare Policy and Law, Mrs. Marion Wright Edelman of the Washington Research Project, and others. The desire to see a clarification of this point stemmed from a set of recommendations that were the end-product of a very successful school lunch conference sponsored by the Children's Foundation of Washington, D.C. At that conference the participants expressed a unanimous desire for unambiguous regulations clearly reflecting the intent of Congress which was to assure access to free or reduced-price lunches by all needy children. In support of these intentions, Congress promised that it would—for the first time—assure that sufficient funds are available to make the school lunch program available to all needy children.

Mr. President, the Department has clearly reflected this intent of Congress in their issuance of the final regulation. Section 245.3 now reads:

> Each school food authority shall serve lunches free or at a reduced price to all children whom it determines, in accordance with the requirements of this part are unable to pay the full price of the lunch . . . Any criteria included by a school food authority in addition to the minimum criteria specified in this section shall relate to providing free or reduced price lunches to children who would not be eligible for such lunches under such minimum criteria. In no event shall any such additional criteria operate or be applied so as to deny free or reduced price lunches to children who qualify for such lunches under the minimum eligibility criteria required by this section.

This clearly is consistent with the intent of Congress to extend the program benefits to every needy child and the program itself to every school. And the regulations now clearly emphasize that when one school in a school district serves lunch, then all other schools in that district must provide equal treatment in nutritional services for all needy children.

My only regret is that the progress of developing regulations and issuing them in final form had not begun sooner and ended at an earlier date. But, at any rate,

all is clear now. Every needy child shall be served a free or reduced-price lunch. That is the law. The regulations confirm this on the administrative level. Now we shall get on with the business at hand—to end hunger in America's classrooms.

THE ROLE OF THE GRAND JURY IN THE ADMINISTRATION OF CRIMINAL JUSTICE

Mr. McCLELLAN. Mr. President, I have just had brought to my attention by Mr. Loyal Meek a series of articles published in the Milwaukee Sentinel during the early part of this month dealing with the role of the grand jury in the administration of criminal justice. I am sure that if all Members of the Senate and the House had the opportunity to study this series, it would greatly facilitate the processing of the grand jury provisions of S. 30, the Organized Crime Control Act of 1969. Too much of the controversy surrounding these provisions can be said to be based on a failure to see the role of the grand jury in its historical context.

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

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

[From the Milwaukee Sentinel, Aug. 5, 1970]

THE GRAND JURY—I: HOPE FOR "THE PEOPLE" LIES IN REVITALIZED INSTRUMENT OF JUSTICE

(By Loyal Meek)

Power to the people!

That embodies too worthy a principle to let it be perverted and monopolized by the radicals.

Despite the slogan's alien origins and undesirable associations, it still expresses the essence of democracy.

Conservatives—and a growing number of liberals—complain, however, that political power in America is rushing away from the people and toward a big, central, collective government in Washington.

STOPPING THE FLOW

How can this flow be stopped? How can we renew the principle of basing governmental powers on, as the Declaration of Independence puts it, the consent of the governed?

How can power be restored to, in the first seven words of the Constitution, "We the People of the United States," other than by violent revolution that would end all power in the hands of a tyrant?

One possible way is by a revitalization and strengthening of the federal grand jury system.

In this series of articles, The Milwaukee Sentinel will present the case for a revival of this neglected instrument of justice by which the people, in a fair, orderly and effective manner, might regain some sovereignty over their government, some control over Big Brother before it is 1984 and too late.

Subsequent articles will seek to:

Explain what the grand jury system is and how it operates.

Relate its history, both ancient and modern.

Report on the efforts being made to revitalize the federal grand jury system and to strengthen its powers.

Sketch how the system might be used to turn a government grown into an arrogant master, back into a public servant deserving of respect.

Consider how a grand jury could be a fairer and more effective means of bringing about the change and reform than the hodgepodge of self-appointed inquisitors, both official and unofficial, now galloping hither and yon over the American landscape.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. . . ."

So begins the Fifth Amendment to the Constitution.

Yet this initial clause seems almost as casually forgotten as the other clauses of the hard ridden Fifth are being intensively invoked. While the rights not to be put in double jeopardy, not to have to testify against one's self and not to be deprived of life, liberty or property without due process of law are being vigorously exercised and defended, the right of an individual not to have to answer for an infamous crime unless on a presentment or indictment of a grand jury is being largely overlooked or circumvented.

EFFORT UNDERWAY

It is not, however, so much the indictment power of the grand jury that has been neglected. Rather, it is the presentment—or reporting—power that has been underutilized. It is this inquisitorial function of the grand jury system that offers, not a panacea but at least great possibilities as a means of restoring power to the people.

An effort is well along to revitalize the federal grand jury system by expanding its reporting powers.

One of the main items in the package of anticrime measures pending in Congress is a proposal to empower special grand juries to make reports concerning noncriminal misconduct by a public officer or employe and recommend legislative, executive or administrative action in the public interest or regarding organized crime conditions in a judicial district.

That package, known as S. 30, passed the Senate, 73 to 1, and is now under consideration in the House Judiciary Committee.

Meanwhile, a revival of the federal grand jury system appears to be underway already, complete with an assertion of reporting powers.

A federal grand jury in Chicago, after an investigation into the police raid last Dec. 4 in which two Black Panther party members were killed and four others were wounded, issued a report that criticized both the police and the Panthers. By putting in calm and reasoned perspective an episode that had been steeped in wild charges and countercharges, the report provided a persuasive demonstration of how the grand jury system can be used as an investigative instrument, a way for the people to learn of conditions that need correcting.

But the provision strengthening grand juries is one of the anticrime measures drawing severe objections from some quarters. The Board of Governors of the American Bar Association recently adopted a resolution against authorizing grand jury reports commenting on noncriminal misconduct of government officials. The American Civil Liberties Union also objects to this provision, among others.

Proponents of the provision strengthening federal grand jury powers answer that reports would be subject to strict procedural restrictions. A person criticized by name in a grand jury report would be given an opportunity to file an answer before the report is made public.

This is a safeguard seldom enjoyed by persons who find themselves the targets of legislative or executive investigators or of a Ralph Nader raider.

HISTORIC FUNCTIONS

"Proper use of the grand jury's inquiring and reporting functions may mark the resurgence of that body as an important factor in effective government. At the same time, such use will protect the citizenry from the tyranny of improper accusation. These have been historic grand jury functions, somewhat neglected in the misinterpretation of that body's history and in the grand jury's preoccupation with the quasi-mechanical operations of handling routine indictments."

That was the conclusion of Richard H. Kuh, an assistant district attorney in New York County, in an article in the Columbia Law Review of December, 1955.

Today, with government grown grossly bigger and with increasing numbers of accusations being flung right and left, Kuh's conclusion packs more relevance than ever.

THE GRAND JURY—II: PANEL'S STRUCTURE DEFINED BUT AUTHORITY UNCLEAR

(By Loyal Meek)

What is a grand jury and how does it function?

In simplest terms, a grand jury is a group of citizens representing a cross section of the community, chosen by lot, serving as an arm of the court for a limited time with the power to subpena witnesses, to make inquiries in secret, to file presentments (reports) and, if probable cause is found, to return indictments.

The several states have a wide variety of grand jury systems. Wisconsin has made relatively little use of the grand jury tool but this may change as a result of recent legislation encouraging its use.

The federal grand jury system provides for juries of not less than 16 or more than 23 members.

TERM LIMITED

Federal grand juries are creatures of the federal district court. A jury serves until discharged but no more than 18 months.

The court appoints the foreman and the deputy foreman. The jury is assisted by the district attorney's office but no person other than jurors may be present while the grand jury is deliberating or voting. Indictments can be found only on the concurrence of 12 or more jurors.

To use the grand jury system as a means of restoring power to the people, it is the inquisitorial and reporting function, rather than the indicting function that needs to be revitalized.

POWERS UNCLEAR

The powers of the federal grand jury are not spelled out in detail in the federal statutes. This leaves murky its authority to ferret out and make known such things as governmental inefficiency, neglect and other misconducts short of crime.

There has long been a debate, mainly within the legal profession, over the reporting powers of grand juries.

One side says a panel of ordinary citizens, with no expertise, has no business passing judgments on public matters.

The other side contends that the grand jury not only has a reporting power but is ideally suited to police the conduct of public officials.

WEAKNESSES NOTED

Long before anyone had ever heard of Ralph Nader and his "raiders," concerned people were pointing out the weaknesses and drawbacks in investigatory groups other than the grand jury sort.

In an article in the Columbia Law Review in 1955, Richard H. Kuh contrasted the fitness of such free swinging investigatory groups to conduct serious inquisitions into official misconduct with that of a grand jury which always must act subject to enforceable restraints.

"Investigatory committees, whether of the legislative or of the executive arm of government, suffer common defects," Kuh said. "Their members, being either elected or appointed by elected officials, ordinarily are not completely free of political motivation.

"Elected officials and professional investi-

gators are apt to find their own personal interests best fostered by publicity. Consequently, investigations are most often either conducted in full public spotlight, or are punctuated by frequent reports to the public of interim results.

PARTIALITY POSSIBLE

"The hearings conducted and the ensuing reports are often uninhibited by the limitations imposed by rules of evidence. As the outcome of all these investigations is probably influenced by political considerations, partiality and a deliberate lack of thoroughness are apt to be present."

Kuh observed that these defects are not necessarily found in all such investigations. But anyone who has taken any note of investigations by congressional committees, presidential commissions and other official bodies in recent years must admit that there is a great deal of validity in Kuh's list of shortcomings.

"Similar weaknesses exist as to inquiries privately fostered," Kuh also pointed out. "Newspaper conducted investigations are ordinarily not impartial. Their reports are likely to be in line with the prevailing editorial policy and are, at least in part, designed to sell papers."

Today, similar criticism might also be made of television.

"Private organizations," Kuh continued, "whether lawyers' or veterans' associations, or other publicly spirited groups, often bestir themselves to investigate only because of a preconception as to how their studies will turn out. . . .

SEEM BETTER SUITED

"Grand juries appear better suited than either legislative or executive committees or private bodies to police the conduct of public officials. Because of the breadth of grand jury authority, contentious refusals to answer questions alleged to be beyond the scope of the investigation will probably not hamstring the investigations. The combination of subpena power and secrecy permits testimony to be taken with minimum embarrassment and, indeed, with minimum risk of reprisals to the subpenaed witnesses. . . .

"The jurors, nonprofessionals, ordinarily are not dually engaged in both investigating the misconduct of public officials and in fostering their own public careers. The effect of any unworthy ambitions of the state's (or district's) attorney on an investigation may be minimized by the mature judgment and at least nominal control exercised by the nonpolitical lay jurors.

NOT AUTONOMOUS GROUP

"Most significantly, the grand jury is not an autonomous group, completely the master of its own investigation. Its action is subject to immediate control by the court of which the jury is but an arm."

Despite its great potentialities, the federal grand jury system has largely been neglected as an instrument of the judicial process. Relatively few laws pertaining to it are in the books.

Legislation spelling out the powers of a federal grand jury was introduced in 1951 but failed to pass.

There has been considerable discussion in the law reviews in recent years on the powers of the grand jury. But there has been relatively little about the grand jury as an institution of the democratic process in the lay press.

PUBLIC CONCERN

The current flurry of legislative interest in the federal grand jury system stems mainly from the public concern with the soaring rate of crime.

A proposal to provide for special grand juries and to give them strong reporting powers is a part of a bill, S. 30, relating to the control of organized crime in the United States.

Although its backers emphasize that it is aimed primarily at organized crime, the proposal would appear to extend grand jury powers to apply generally.

In fact, by empowering special grand juries to report "concerning noncriminal misconduct, malfeasance or misfeasance in office by a public officer or employe as the basis for a recommendation of removal or disciplinary action," S. 30 appears to offer a legal tool with which power could indeed be restored to "We the people."

THE GRAND JURY—III: MODERN FORM OF SYSTEM TRACED TO 12TH CENTURY

(By Loyal Meek)

Grand jury origins have been traced to Greek, Roman and Scandinavian civilizations. In modern history, however, its earliest form was created in England in 1166 at the behest of King Henry II.

The Assize of Clarendon established bodies of laymen charged with reporting, under oath, those persons accused or believed to be robbers, murderers, thieves, or harborers of such criminals. Reports were made to the royal sheriff and royal justices, before whom the prisoners could defend themselves by swearing to their denials and submitting to the ordeal by water—if one survived submersion it was presumed to prove one's innocence.

BOOSTED ROYAL POWER

This progenitor of the grand jury strengthened royal power. For the first 200 years of its existence, the grand assize had little to do with the safeguarding of individual rights.

During the next 300 years, it apparently became a grand jury function to lodge all charges of crime whether or not private accusers came forward, and the custom of hearing witnesses in private was adopted.

Two cases which arose in England in 1681, and in which departure from the custom of secrecy was forced, marked the start of the grand jury's role as a protecter against tyranny.

The cases were heard at a time of political unrest, not unlike the present situation in the United States. Against a background of nearly equal struggle between the king and a delicately balanced parliament, a grand jury heard the evidence of treason in the Colledge and Earl of Shaftesbury cases, but refused to indict.

GUILT PROBABLE

Although these cases are celebrated for establishing the grand jury as a bulwark against despotism, in the light of the times it is not unlikely that in fact each defendant was guilty of treason, relates Bernard Kuh, New York attorney, in an article on the grand jury.

The refusal to indict may be explained, at least in part, by the fact that the jurors' political beliefs were similar to those of the accused.

A half century later, the early stirrings of American reaction to British colonial rule were mirrored by a New York Colonial grand jury, which twice refused to indict Peter Zenger, publisher of the Weekly Journal, for libel of the English governor, William Cosby.

Regardless of the political motivation, the actions of the two 1681 grand juries and of the 1734 New York Colonial grand jury in the Zenger case have been celebrated as heroic conduct protecting the right of the citizen from tyranny.

They demonstrated that an official body with power to protect against government excesses and to negate improper actions of tyrants is desirable, Kuh noted.

CLEARLY HAVE POWERS

Grand juries, by refusing to indict, clearly have those powers. They also have this power by taking the affirmative action of reporting on the derelictions of government officials.

Despite the proven value of a grand jury system, the grand jury as an inquisitorial and accusatory instrument of justice was the target of reformers in England, who sought to eliminate it, and in America, who sought to restrict it.

A definitive history of the grand jury in modern times has been written by a former Wisconsin man, Richard D. Younger, first as his doctor's thesis at the University of Wisconsin and then as a book, "The People's Panel."

JEFFERSON NATIVE

A native of Jefferson, Younger attended college in Milwaukee and Madison and was an instructor at what was then the UW Milwaukee Extension Division. Since 1954 he has been a member of the history department at the University of Houston, Texas.

After reviewing the history of the grand jury in colonial times and during the birth of the nation, Younger points out that in England in 1821, Jeremy Bentham, the great codifier and legal reformer, struck out at the grand inquest as "an engine of corruption" which was "systematically packed" on behalf of the upper class.

ARGUMENTS STILL HEARD

Bentham also opposed it on the ground of efficiency. As a utilitarian, he had little patience with a body composed of "a miscellaneous company of men" untrained in the law. He believed that a professional trained prosecutor could perform the functions of a grand jury with far greater efficiency and with less expense to the people and less bother to the courts.

These elitist arguments were picked up by opponents of the grand jury system in America and are still heard today.

In addition, the opponents of the system, harking back to the olden times when such primitive practices as ordeal by water were associated with the grand inquest, kept up a steady attack on the grand jury as barbaric.

Another favorite criticism had to do with its secrecy. Its sessions were frequently, and sometimes still are, compared to "the inquisition of the Star Chamber," even though the time tested reasons for secrecy are eminently sound.

But the basic issue in the continuing debate between the pro and con forces centered on the issue of professionalism vs. amateurism. Those who favored leaving investigation and accusation power strictly to the experts argued that laymen simply are not qualified to conduct inquiries, weigh the evidence and make the decisions that grand juries are called upon to do.

Throughout the 19th century, during which time most of the state governments were shaped, the grand jury system was under constant attack by the reformers. They scored a breakthrough in Michigan in 1859 when the Legislature all but abolished it by providing that all crimes be prosecuted upon the information of a district attorney.

STATE ENCOURAGED

Wisconsin opponents drew encouragement from the Michigan example. The Milwaukee Sentinel of that day was a foe of the grand jury system. It attacked grand juries editorially as cumbersome and expensive "instruments of private malice."

When the Wisconsin Legislature convened in 1860, Sen. Robert Hotchkiss proposed and the Senate adopted a resolution asking the Judiciary Committee to investigate the expedience of abolishing the system. Newspapers hailed this as "a good omen of reform."

The Wisconsin Senate passed the resolution calling for a constitutional amendment but its action went for nothing when the Assembly buried the resolution in committee.

After the Civil War, the campaign to abol-

ish the institution was resumed in Wisconsin.

In the referendum on Nov. 7, 1870, the people of Wisconsin voted overwhelmingly for reform and the grand jury ceased to exist in the state except when specially summoned by a judge.

THE GRAND JURY—IV: SYSTEM'S POTENTIAL CITED OVER CRY FOR ABOLITION

(By Loyal Meek)

In the last century, the grand jury as an instrument for giving power to the people has had a varied history, little of it glorious.

Prof. Richard D. Younger in his book, "The People's Panel," notes that after Wisconsin abolished regular grand juries in 1870 there followed a series of constitutional conventions in which the question of retaining the system became a hot issue.

Antijury forces fared especially well in the western states.

Despite the success of reformers in abolishing or curtailing state grand jury systems, the institution was not without its defenders.

SEEN POTENT GROUP

"Amidst the abuse and the cries for reform, there were some who saw the institution as a potent instrument of the people," Younger writes.

Judge Herman Yerkes of Pennsylvania was one who retained the belief that grand juries could provide the means of extending democratic control of government. In September, 1901, he told jurors of Bucks County that bodies such as theirs, representing the people of the community, were not outmoded or useless.

In times of great public peril or in the event of deep seated abuses, Yerkes observed, "The divided yet powerful and also combined responsibility of the secret session of the grand jury . . . has worked out great problems of reform and correction."

NOTION DISPELLED

Yerkes dispelled the often repeated idea that because the United States was not ruled by a tyrannical king, grand juries had ceased to be necessary as guardians of individual liberty.

He explained that tyrants even more irresponsible than the despots of old sought to dominate local, state and national governments.

Giant business (and now labor union) monopolies, restless of legal restraints and party bosses who did not hesitate to break judges and create courts, took the place of tyrannical monarchs as a danger to freedom in the United States. Against such ruthless forces Yerkes saw grand juries as powerful agencies of the people, challenging business or boss domination of government.

WATCHFUL EYE NEEDED

At a time when many legal scholars advised abandoning the grand inquest as an archaic relic of the past, the Pennsylvania judge saw what they had failed to see, notes Younger—that there were enemies of freedom in America which demanded the watchful eye of the grand jury if the American people were to control their government.

About 14 years later, around 1915, a layman well experienced in the work of the grand jury defended it as a valuable and democratic agency of the people.

New York publisher George Haven Putnam recognized that inquests could be slow and unwieldly bodies which frequently tried the patience of judges and prosecutors but he did not believe it was fair to judge the institution solely on that basis.

CONCERN FOR RIGHTS

Democracy does not necessarily mean deficiency, Putnam reasoned. It means a careful concern for the rights of persons who have been arrested as well as the ability of citizens to initiate investigations of abuses in government and to make officials responsible to them.

After serving on blue ribbon panels in New York City over a period of 35 years, Putnam became convinced that no other institution provided such a degree of popular participation in government. He openly challenged the advice of former President Taft, who had opposed the institution, by contending that "there is no other way citizens can bring criticism directly to bear upon public officials."

Putnam saw grand juries as more than mere law enforcement agencies. He recognized that during their term of office, the jurors acted as the representatives of the people of the country and in that capacity could call before them all public officials, high or low.

CAUSE COULD SUFFER

When such bodies ceased to sit, the cause of popular government had suffered a severe blow.

"Early in 1917, grand juries ceased to sit in England. The pressure of a life and death struggle with Germany led Parliament to suspend them for the duration of the war," Younger relates.

"Although the noise of battle hushed all but a few critics of the moves, some Englishmen saw the paradox in fighting for democracy abroad while restricting it at home. They suggested that even a democratic government such as Britain's might need the strong check against arbitrary rule which grand juries provided.

"Reformers in the United States were unable to turn the war to their advantage as their counterparts had done in England. Following the war, opposition to the grand jury in both countries increased. Finally, Parliament abolished grand juries in England, effective Sept. 1, 1933.

IDEAS CHANGED

"By the 1940's, however, the growth of dictatorship abroad and the entry of the U.S. into World War II convinced many thinking Americans that institutions which protected the rights of the people were not outmoded. Fear of executive tyranny and infringement of individual liberty gave a new importance to the inquest of the people.

"With war and other threats to freedom close at hand, mere efficiency made less appeal. It became apparent to many persons that the grand jury was more than a means of bringing individuals to trial. It was an integral part of the American democratic government."

Following World War II and until recently, however, grand juries have been forgotten for the most part in favor of other investigatory and accusatory devices, including legislative committees and presidential commissions in the official sector and self-appointed inquisitors and accusers such as Ralph Nader in the nonofficial sector.

Not that some of these inquisitions have not been useful. But as inquisitions have proliferated, they have tended to become more and more careless with the rights of those under investigation and to escalate trading in more and more reckless accusations.

Thoughtful citizens, becoming increasingly concerned about this trend, are looking for ways to counteract it. One of the ways receiving attention is through the revival of the federal grand jury system, as a means of protecting the rights and freedoms of the targets of the accused from these wide ranging and free wheeling accusers on the American scene today.

THE GRAND JURY—V: REVITALIZATION BILL BOGGED DOWN IN HOUSE

(By Loyal Meek)

A bill which would give a big boost to revitalization of the federal grand jury system has been passed by the Senate and now faces an uncertain fate in the House.

Known as S. 30, it is a package of measures relating to the control of organized crime in the United States.

S. 30 was introduced by Sen. John L. McClellan (D-Ark.), chairman of the Senate Judiciary Subcommittee on Criminal Laws and Procedures, on Jan. 15, 1969, five days before President Nixon's inauguration. It was an outgrowth of recommendations made by President Johnson's Crime Commission in 1967.

The new Republican administration soon gave S. 30 its support. Thus these measures to fight crime and corruption have a bipartisan background.

SNAGGED IN HOUSE

They received overwhelming support until they reached the House, where they have run into a snag of opposition from some liberals who have raised the bogeyman of repression.

The section of S. 30 with which this series of articles is concerned is Title I. It provides for the summoning of special grand juries at least once in every 18 month period in the 13 federal judicial districts having in excess of 4 million population and in other districts, including Wisconsin's eastern and western districts, where the attorney general determines the need on a case by case basis.

While aimed primarily at organized crime, the special grand juries would have powers to investigate and report on "noncriminal misconduct, malfeasance or misfeasance in office by a public officer" and to propose "recommendations for legislative, executive, or administrative action in the public interest based upon stated findings."

SWEEPING POWERS

These are indeed sweeping powers. But they are, at the same time, carefully restricted and controlled powers.

The Senate passed S. 30 last Jan. 23 by a vote of 73 to 1, with Sen. Lee Metcalf (D-Mont.) the lone dissenter. It acted after defeating, 13 to 59, an amendment by Sen. Charles Goodell (R-N.Y.) to delete the section allowing a grand jury to report its findings with regard to noncriminal misconduct by public officials or employes.

OBJECTIONS OUTLINED

S. 30 is now in the House Judiciary Committee, headed by Rep. Emanuel Celler (D-N.Y.). There it is encountering considerable last ditch opposition, primarily from the American Civil Liberties Union and a New York City Bar Committee which have objections to many, if not most, of the bill's provisions.

In a letter to each senator last Jan. 20, the ACLU contended that S. 30 would "make drastic incursions on civil liberties" and that it runs "counter to the letter and spirit of the Constitution."

In a major Senate speech in June designed to counter the efforts to block S. 30 in the House, McClellan answered the ACLU and NYBC objections point by point after characterizing them as indiscriminate and specious.

"There are among us today," McClellan said, "self-appointed shepherds of civil liberties who decry every attempt to strengthen the process of law enforcement in our society.

"Like the shepherd boy who so long ago endangered his flock by sounding false alarms, these modern day shepherds run the risk, too, of endangering the civil liberties of us all.

"TIDE OF LAWLESSNESS"

"No civilized society can long permit within its domain an ever rising tide of lawlessness. Such a tide is now lashing out against our society, and there are few who do not agree that it must be stopped and turned back.

"Nevertheless, I am concerned that there is a danger that if this difficult task cannot be accomplished now with the enactment of prudent reforms in the administration of our system of criminal justice, other less prudent steps will be taken at a later time—to the detriment of us all . . ."

In support of the section on special grand juries, McClellan pointed out that they would be given a degree of independence from the court and prosecutor to insulate them from political influence in sensitive organized crime investigations.

SPECIAL FEATURES

Independence would be achieved by authorizing a special grand jury to elect its own foreman and deputy foreman and by giving the jury the right to obtain review of any dispute between the jury and the court or prosecutor. This is one of the few features that the attorney general's office objected to in the entire anticrime legislation package.

In defense of this provision, McClellan pointed out that, "like regular grand juries, these special grand juries will have the benefit of the guidance and assistance of the prosecutor and the court, but the measure of independence provided by Title I will enable them to function as an effective investigatory body, acting without political fear or favor."

Crime fighters regard this feature as of crucial importance. It is a key to effectiveness in battling organized crime, which, they say, cannot operate without involving public officials somewhere along the line.

CITES SAFEGUARDS

McClellan emphasized that the new law would surround "the reporting power with safeguards which must be followed before a report critical of an identified individual can be published, including the right of the individual to require that witnesses be called before the grand jury to present the individual's side of the case, the requirement that the court determine that the evidence supports the report before it is published, the right of the criticized individual to append to the report a rebuttal which is published simultaneously with it, and the right to obtain judicial review of the report prior to its publication.

"Even so circumscribed by such strict limitations, the reporting power of the special grand jury will be a powerful instrument for public education and reform of government, and Title I will greatly aid the effort of our government and society against organized crime," McClellan said.

RESPONSE TO BAR

Responding to a resolution by the American Bar Association Board of Governors calling for elimination of the provision empowering grand juries to make reports on public officials, McClellan, in a Senate speech on July 21, pointed out that "such reports are now possible under the laws of 27 states (not counting Wisconsin), and they have proven, on the state level, to be effective and helpful in the administration of justice.

"I am therefore convinced that the right to file these reports should be clarified and restored to the federal level under the sort of careful safeguards we have provided in Title I."

THE GRAND JURY—VI: FOES OVERLOOK BENEFITS, CITE POSSIBILITY OF ABUSE

(By Loyal Meek)

It would seem logical to assume that persons concerned about protecting individual rights would be for rather than against legislation which would revitalize the federal grand jury system, including expansion of the reporting power.

But the opposite seems to be the case. The American Civil Liberties Union, for example, appears adamantly opposed to a carefully controlled extension of grand jury powers.

Opponents imagine all sorts of abuses.

Noting that pending anti-crime legislation would empower a grand jury to make reports on noncriminal misconduct of any public official or employe, an ACLU director envisioned reports criticizing "the high school janitor who fails to sweep the halls properly, or a zoo attendant who neglects his assigned duties."

OTHER QUALMS

A spokesman for the National Association of Counties worried that a grand jury could criticize him for perhaps missing too many county council meetings "or a federal legislator who misses 10 roll call votes."

Obviously, these go to ridiculous extremes to find reasons to fear giving grand juries increased reporting powers.

In probing governmental inefficiency, grand juries would have far bigger fish to fry before getting around to checking up on whether a high school janitor is sweeping the halls properly.

ABSENTEEISM ISSUE

As for checking up on an elected official's record of attendance and voting at public meetings, since these are matters of public record, they are not things a grand jury would need to take time probing.

But a grand jury might very well take into account a high rate of absenteeism in connection with an investigation of allegations of misconduct on the part of an elected official.

In fact, a tremendous backlog of unwholesome situations that need grand jury investigation has accumulated—such a pile of them that the primary problem might be where to begin.

For example, a special federal grand jury might very well find it in order to investigate a community's drug problem. With expanded powers, it might prove to be a highly effective instrument for ferreting out the pushers.

In this connection, Sen. John L. McClellan (D-Ark.), chief sponsor of legislation to strengthen the grand jury system, has asked: "Who can be more qualified to evaluate the problems of drug traffic in the ghettos than the citizens who are exposed to this depravity on a daily basis?"

NEED FOR CO-OPERATION

"I do not believe," McClelland said, "that we can stop the drug traffic or solve any other problem associated with organized crime without the co-operation and participation of those who are the victims of criminal activity."

This calls attention to one of the extra benefits to be derived from a revitalized federal grand jury system. Through direct participation, ordinary citizens called to serve on a grand jury receive an education and valuable experience in the workings of their government. In the idiom of the day, they become involved.

Such direct participation could be a strong antidote to the feelings of apathy and alienation now afflicting the American body politic.

In Wisconsin there has been a protracted political dispute over how seriously the state is infested by organized crime. A special grand jury investigation in the eastern district could issue a report that might, if it didn't settle the question, at least give a reasonably reliable indication whether organized crime is a significant problem here.

KENT STATE TRAGEDY

The Kent State tragedy offered an example of how a federal grand jury with reporting power could well serve the ends of justice.

A team of newspaper reporters that pieced together a story on the Kent shootings evidently did a thorough job. Yet, no matter how well done, a press report lacks the objectivity, credibility and finality that could be commanded by a report by a grand jury with the power to subpena witnesses and take testimony in secret.

An investigation by a presidential commission may be better than nothing but it will not begin to be as acceptable as one by a federal grand jury which would be much further removed from political prejudices and passions than any group appointed by a Republican—or Democratic—president ever can be.

OTHER TYPES OF REVIEW

Those who seek to have police review boards established to investigate such things as alleged police brutality might better turn to the grand jury system. Likewise, some of the things proposed to be done by consumer protection agencies and by ombudsmen might be done more effectively by grand juries.

In his book, "The People's Panel," Richard D. Younger points out that "the most important aspects of the grand jury are its democratic control and its local character." Says Younger:

"Governmental power has to a large extent replaced all other threats to a democracy in the United States. The increasing centralization of governmental authority and growth of a huge bureaucracy in no way responsible to the people has made it vitally necessary to preserve the grand jury.

"It often serves as the citizen's only means of checking on political appointees or preventing illegal compulsion at the hands of zealous law enforcement officials.

"At a time when centralization of power in Washington has narrowed the area of democratic control, grand juries give the people an opportunity to participate in government and make their wishes known. . . .

CHANCE TO PARTICIPATE

"Citizen panels have demonstrated repeatedly in the past that they could protest effectively in the name of the people against centralized authority. Today, grand juries remain potentially the strongest weapon against big government and the threat of statism."

In this era of demonstration and confrontation, two words in Younger's assessment of the potential use of the grand jury stand out—"protest effectively."

Certainly a grand jury report is infinitely preferable to bricks, fire bombs, shouted obscenities, political rhetoric and character assassinations as an effective means of protest.

The strengthening of the grand jury powers, as proposed in the anticrime bill now pending in the House, holds out a most promising way of restoring power of the people.

"CHILDREN IN TROUBLE: A NATIONAL SCANDAL" IN JUNE 1970 READER'S DIGEST

Mr. GURNEY. Mr. President, the June 1970 issue of the Reader's Digest contains an article entitled "Children In Trouble: A National Scandal." The article was condensed from the book of the same title by Howard James, of the Christian Science Monitor.

In an investigation of correctional institutions for young people during 1969, James observes that these institutions are often places where children—some as young as 7 or 8—"have been brutally beaten, forced into homesexual acts, rub elbows with vicious criminals, and where solitary confinement is a common occurrence."

The shocking accounts of neglect and brutality as portrayed by Mr. James are widespread and indeed a national scan-

dal. Mr. James states that "few States are free of abuses." Mr. President, I am ashamed that Florida was not among those few. The Florida School for Boys, in Marianna, does not escape Mr. James' investigation. Several instances of brutality and total lack of humanity toward youngsters are recounted to the obvious revulsion of readers.

Mr. President, I am happy to report that much in Florida has changed since Mr. James' initial visit to our State. Responding to Mr. James' revelations, Florida immediately set in motion processes that are today making the Florida Boys School a model for all such institutions across the land. Mr. Oliver J. Keller, Jr., was hired to head the Florida Division of Young Services. The results speak for themselves, Mr. President. In an article published in the Monitor of August 18, 1970, James upon revisiting Marianna states:

No institution has made such rapid progress in the past year as has the Arthur G. Dozier School for Boys. It is apparent that the Florida reform-school system, once as bad as any in the Nation, is one of the best, if not the best—in terms of changing attitudes of boys in trouble—in the South. Mr. Keller and his staff appear determined to make the system the best in the Nation. If progress continues at the present rate it seems certain this could happen.

Mr. President, I ask unanimous consent that Mr. James' recent article be printed in the RECORD. While it is sad that such a situation as existed in Marianna was allowed to occur, Florida's experience illustrates what can be done when we have the will to do so.

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

CARING VERSUS CRUELTY—FLORIDA BOY'S REFORM SCHOOL WORKS ITS OWN REFORM IN SHORT ORDER

(By Howard James)

MARIANNA, FLA.—Under a searing summer sun, beneath scattered pines, stand the worn-out buildings of the Arthur G. Dozier School for Boys—an institution severely criticized by this writer in the Children in Trouble series in the spring of 1969.

Now a quick glance at the grounds suggests—erroneously—that little has changed since my first visit.

The buildings appear the same. Boys in ill-fitting T-shirts and jeans move quietly across the grounds in supervised groups. Some still work hauling garbage. Others spend their time in the laundry or kitchen or do other chores to keep the reform school operating. The academic program is, perhaps, a bit better, but vocational training remains substandard.

TALKING TO THE BOYS

Steel doors have replaced the smashed wooden ones on the solitary-confinement cells. A fenced play area permits boys in the security cottage to exercise—a unit that is still overused, housing some boys for minor infractions.

Talk to the boys and staff. It is then you learn of the phenomenal change that has taken place. Most of the anger, fear, frustration, resentment, and hatred that permeated the reform school has faded. The grimness still seen at facilities in Texas, Indiana, South Carolina, and so many other states has been swept away.

It is clear the Arthur G. Dozier School has changed—significantly. Talk to Hubert Cook, staff veteran, who says conditions are the best he has seen in his 22 years at the institution. Mr. Cook runs the laundry and supervises between 18 and 24 boys each day.

"Things are so much better I don't know how to put it in words," he says. "The boys are more interested in their work. They have a good attitude. When I took over the laundry 12 years ago there had been 75 broken windows. We were averaging up to six or seven broken windows a month. But we've had only one broken in the past six months.

"We don't have a tenth of the stealing, in fact it's stopped," adds Byron Vaughn, Mr. Cook's assistant. "And we don't have clothing being damaged any more."

Messrs. Cook and Vaughn insist they know of no staff members who are unhappy with the change. Now most can go home in the evening without the exhaustion that comes from having battled angry youngsters all day.

Community attitudes have changed as well.

"I live in Marianna," Mr. Cook says. "The attitude of the people has changed as much as the boys have. They used to be frightened, but now they're proud of the school. The feeling is 100 percent better than it was.

"About three months ago our pastor started a ministerial association program out here. The school is getting a lot more community support."

Or talk to the boys, especially those who have been committed three or four times to the reform school by local courts:

"When I first came here it was bad, real bad," says one 16-year-old Negro youth. "I been here four times. In 1967 they took me up to what they called the white house and beat me with a strap because I ran away. People would go wild on you, slap you around. They wouldn't give you enough food.

"Now, I think most of the people care for you and want to help you. It still could be better, but things have changed a lot."

Richard is also 16, a white youth from northern Florida. He has been in the institution twice for fighting.

"There's been a lot of changes," he says. "There's a lot less fightin', and the kids are more concerned for each other. There seems to be more activities—softball, swimming, and trips.

"You get to make some phone calls home now, and you can go into town to go shoppin'. They've had girls here for parties, and they let some cottages go to parties at the girls' school, and there hasn't been so much sex between boys since they started that."

The story is nearly the same throughout the institution. Of a staff of some 300, it seems clear that only a handful—probably fewer than a half dozen—assault youngsters with their fists. Authorities are weeding out these men day by day. And more employees who believed in the old two-fisted method are being converted to the new program of caring and helping.

VISIT TO MINNESOTA

What brought about the change?

Oliver J. Keller Jr., who heads the Florida Division of Youth Services, was brought in to turn the department around. Last year he and key staff members visited the reform school in Red Wing, Minn. (an institution described in the Monitor series). Mr. Keller assigned Jack V. Blanton of Miami to the job of starting similar programs in all Florida juvenile institutions.

The Red Wing program was developed by Harry Vorrath of St. Paul, Minn. Mr. Vorrath has taken a popular form of group therapy and with marked improvements has made it his own. He says that his approach "stops all the hurting" that goes on and emphasizes love—"the kind of love a marine has when he crawls on his belly under fire to bring back a wounded buddy."

One who watches youngsters participate in the Vorrath program recognizes that the give and take of the group discussions closely resembles the constructive support a youngster can get in a large, happy family.

At Marianna the superintendent, Lenox E. Williams, and his staff are improving the program each day. Mr. Vorrath recently visited the school for evaluation and staff training.

The reform school at Marianna has not yet reached the level of the Red Wing institution. But the Marianna school is far larger, and Florida spends less money for staff, training, living quarters, food, and clothing.

No institution has made such rapid progress in the past year as has the Arthur G. Dozier School for Boys. It is apparent that the Florida reform-school system, once as bad as any in the nation, is one of the best, if not the best—in terms of changing attitudes of boys in trouble—in the South. Mr. Keller and his staff appear determined to make the system the best in the nation. If progress continues at the present rate it seems certain this could happen.

MOLLENHOFF EXPOSES NASA GENERAL ELECTRIC BLUNDER

Mr. PROXMIRE. Mr. President, to what extent do the giant aerospace contractors unduly influence the award of Government contracts? Is there a conflict of interest when a high Government official awards a contract to a firm where he was formerly employed or where he will be employed when his term of public service is over? Are middle-sized and small businesses discriminated against in Government procurement matters?

These and similar questions have been raised by the many improprieties disclosed in military and space procurement investigators over the past several years. But nowhere have they been raised so sharply as in the $50 million communications satellites contract first awarded to General Electric and later rescinded and reawarded to Fairchild-Hiller. An investigation by the General Accounting Office into the original award to GE revealed major irregularities—among them preferential treatment for GE at the expense of its rival bidder Fairchild-Hiller. Perhaps the most disturbing fact in the case, however, was that the head of NASA, the Agency which made the award, subsequently resigned from the big Government position and went to work for GE as a vice president.

It has now been revealed by Clark Mollenhoff, of the Des Moines Register, that Fairchild-Hiller's contract has been held up so that GE can make up its mind whether to file a formal challenge with the space agency. According to Mr. Mollenhoff, George Low, the NASA's acting Administrator, has confirmed the delay and that no time limit has been set for signing the contract. The interested thing about this delay is that it is such a clear contrast with the speed with which NASA moved in signing the GE contract after the original award last April.

One cannot help wondering how it is that a Government agency can move so swiftly to sign a contract with one of its largest contractors and move so slowly to sign the same contract after it has been reawarded to a smaller firm. In 1969,

General Electric was NASA's fifth largest contractor, with over $150 million in awards—GE was also the Pentagon's second largest military contractor with over $1.6 million in awards. Fairchild-Hiller was NASA's 40th ranked contractor with $6.9 million in awards—Fairchild-Hiller was ranked 43d as a military contractor.

I ask unanimous consent that the most recent of Clark Mollenhoff's excellent articles on the GE-Fairchild-Hiller dispute, published in the Des Moines Register, of September 19, 1970, be printed in the RECORD.

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

NASA DELAYS ON FAIRCHILD SPACE AWARD: AWAITS CHALLENGE FROM GE

(By Clark Mollenhoff)

WASHINGTON, D.C.—The National Aeronautics and Space Administration (NASA) has told General Electric officials it will not sign a contract with Fairchild Hiller until General Electric has made a decision on whether to challenge the award of the $50-million space contract.

George Low, the acting administrator of NASA, confirmed Friday that there has been no time limit placed on General Electric in making the decision, and that no time has been set for signing a contract with Fairchild Hiller.

The lack of action in moving the contract has resulted in a protest by Representative Rogers Morton (Rep., Md.), on the "current inaction," and a request that NASA inform him of its planned schedule for signing the contract with Fairchild Hiller.

Friday NASA appointed a committee to conduct a review of buying procedures to avoid challenges on major contract awards.

The original contract was let to General Electric last April amid charges by Fairchild Hiller of "irregularities and inconsistencies."

Dr. Thomas O. Paine, then administrator of NASA, disregarded the Fairchild Hiller complaints and took steps to enter into a contract with General Electric.

DEFENDS AWARD

Dr. Paine, who has since joined General Electric as a vice-president, defended the award to GE, refused to give Fairchild Hiller evaluation papers and defended the fact that General Electric was given an extra week to submit its final bid.

It was Paine who was the "selection officer," and it was Paine who personally authorized the cutting off of funds to Fairchild Hiller on Apr. 16 while continuing funding for GE through July.

A General Accounting Office report scalded the "irregularities" and "inconsistencies" of Paine's original decision, and on Sept. 5, a new NASA selection board announced a decision to reverse the decision and give the contract to Fairchild Hiller.

In the two weeks since that decision, GE officials have said that they do not consider the contract dead, and they have noted that NASA has assured them that no contract will be signed with Fairchild Hiller until GE has had full opportunity to study the record and make any challenge it wishes. Senator Hugh Scott (Rep., Pa.) is backing GE.

Representative Morton, the Republican National Chairman, sent a letter to acting Administrator Low Friday, expressing his concern over reports to him by Fairchild Hiller that no contract has been awarded.

Morton said that he has been advised by Fairchild Hiller that "no contract has yet been signed; that in fact, holding period funding has not yet been reinstated, nor have they been able to obtain from NASA a firm date for negotiation and execution of a contract."

TOO MUCH HURRY

Low was deputy administrator of NASA under Paine, who only last Tuesday went back to GE as a vice-president in charge of the nuclear power program. Paine had been employed by General Electric for 19 years prior to joining NASA in 1968.

Fairchild Hiller officials have contrasted the present delays at NASA in signing a contract with the speed with which Paine moved to sign a contract with GE last April.

Low said, "We were in too much of a hurry last April. We want to make sure that GE has every opportunity to study the record and raise any challenge."

He said he believed the April decision for GE "was right on the basis of the record before us." He said he did not know on Apr. 7 and Apr. 8 that GE had been given an extra week to submit its bid after Fairchild Hiller met a Feb. 27 deadline. Low said he could not remember when he found out about this defect in the original proceedings. He said he was unaware in April of the other "irregularities" that are now established to have taken place at the Goddard Space Center.

NO DISAGREEMENT

Low said that Paine was the "selection officer" on the award, but that he was assisted by two other officials—Low and NASA general counsel Spencer Beresford.

Low said that Paine had asked both Beresford and himself for their views on the award before he had indicated that he too believed the award should go to GE on the basis of experience in the space field.

Beresford said that he had never "disagreed" with the award, but that he did tell Edward Uhl, the president of Fairchild Hiller that he "reluctantly" voted for the award.

Beresford said that he had made "a long argument that, on the basis of horse sense and general fair play," that the award should have gone to Fairchild Hiller. He said that he indicated a willingness to "go along" with the GE decision because he did not have the technical knowledge to discuss the relative merits of the two designs, and because on that last submission, GE did have "a better price."

Subsequent events have disclosed that the better price was achieved through some questionable cost cutting techniques used by GE that were barred to Fairchild Hiller.

SUGGEST SUBCONTRACT

Beresford said Friday that he was unaware at the time that GE had been permitted a Mar. 6 deadline while Fairchild Hiller was forced to meet a Feb. 27 deadline.

Beresford told The Register that he learned from Fairchild Hiller people that there was to be a cutoff of funds, and he then suggested that there be maintenance of funding so Fairchild Hiller would not be irreparably injured while GE continued to receive money through July.

According to Beresford, Paine declared that it was normal procedure to cut funding for Fairchild Hiller and that he did not believe there could be any explanation for spending tax money for just standing by with no services.

Beresford said he suggested that perhaps there might be some way for NASA to talk to GE about a subcontract for Fairchild Hiller, or some other contract that might keep them going until the GAO finished its investigation.

Paine said another contract might provide the answer, but GE wasn't interested, and the whole matter was dropped a few days later, Beresford said.

SEES WEAKNESSES

In announcing formation of the committee to review buying procedures, Low said, "What was good enough for the sixties may not be good enough for the seventies."

"Was the original award too typical of the procedures used in the award of the sixties?" Low was asked.

Low said he did not mean that it was a result of the system that NASA used in the sixties, but that there were "weaknesses" in the system that had permitted the irregularities in the award to GE.

Low said that the GAO report on the GE award, and the subsequent re-evaluation by NASA had pointed up many weaknesses.

Should Paine, a former employe of GE, have had a role in the award to General Electric? Low was asked.

Low said that it was his understanding that at the time of the award in April, and in subsequent actions in April, May, June and early July, Paine did not intend to return to General Electric.

Low has named Beresford to the eight-man steering committee at NASA to examine NASA procurement procedures and to recommend ways in which the space organization can avoid the problems in the controversial award of the application technology satellite (ATS) contract to General Electric in April. The chairman will be Richard C. McCurdy, associate administrator for organization and management.

The review is taking place as Senator William Proxmire (Dem., Wis.) launches an investigation into the manner in which NASA handled the ATS award. He will stress the "irregularities" pointed up by GAO and the special review committee and the possible "conflicts of interest" involved in Paine's role.

COOPERATION AMONG LAW-ENFORCEMENT AGENCIES

Mr. HOLLINGS. Mr. President, in this day of soaring crime rates, it is imperative that there be the utmost cooperation among the law enforcement agencies of all areas.

I invite attention today to an example of how one city, Greenville, S.C., has met the ever-present challenge to modernize. As cities grow, the problems of law enforcement obviously become more complex. Old ways of doing things no longer suffice. This is especially true of police communications. Law enforcement agencies can only be as efficient as their communications system.

Sgt. Jack N. Lister of the Greenville, S.C., police department has written an interesting and informative account of how his city tackled and solved the problem of updating its communications. Greenville has set a pattern which other cities would do well to emulate. I invite attention to the article in the hope that other areas may profit from the Greenville experience.

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:

A MODERN TELECOMMUNICATIONS CENTER FOR EFFECTIVE LAW ENFORCEMENT

Communications are the lifeline of effective law enforcement. As cities grow in size and population, police responsibilities also increase. Larger quarters become necessary and more officers are needed to serve the public.

Outmoded and inadequate communica-

tions facilities will negate other improvements and advancements if delays and overloads become excessive. With this thought in mind, 2 years ago the Greenville Police Department established a project team to analyze and plan a modern police telecommunications center. Assistance was provided by engineers from a prominent firm specializing in radio communications and from the local telephone company.

The term's objective was to design a system which would provide the following:

1. Adequate communications under emergency as well as normal conditions.

2. Coordination of police operations with those of other law enforcement agencies as well as with the fire, traffic engineering, and public works departments.

3. Effective use of limited manpower.

4. Data processing for making evaluations of manpower deployment and intelligence regarding hazardous traffic locations and criminal activity.

In July 1969, an application was made to the Governor's Highway Safety Coordinator for a grant under the Federal Highway Safety Act of 1966 to finance one-half of the estimated $150,000 cost of the department's communications system. This application was approved by the Governor's Highway Safety Commission and subsequently by the National Highway Safety Bureau. The mayor and city council provided a special appropriation to finance the city's share of the cost.

In November 1969, the new telecommunications system for the Greenville Police Department began operation. The equipment in this communications center was specifically manufactured according to the project team's final design for the department and is not a stock-manufactured product.

The old police radio communications system had one-frequency, one-channel capability which was inadequate even under normal operating conditions. It was subject to interference from many sources, such as generators and other machinery located inside industrial plants. The car-to-car transmissions were unreliable with numerous "dead pockets" within the city's area, where neither base nor car-to-car transmissions could be made.

Our new center allows the police dispatcher to simply and effectively coordinate police activities. Each call for police service received at the console is recorded on magnetic tape. The dispatcher has complete control of four new police channels plus access to fire, public works, and State police channels. At each of three positions the dispatcher can transmit on any selected channel or simultaneously on all channels. All channels are recorded on magnetic tape.

To further enhance the efficiency of the system, we installed new solid state mobile radios in all police vehicles. These mobile units use all four channels and can expand to 12 channels or 24 frequencies. Channel-switching is controlled by a rotary switch on the radio control head. Any voice messages transmitted from one of these mobile units are sent through one of four strategically located repeater stations. These stations automatically repeat the message with a much stronger signal to insure its reception by all other units on that channel.

IMMEDIATE ASSIGNMENT

When a call for police assistance is received at the console, the operator records the pertinent information on a pre-numbered computer card and immediately inserts it into a special clock that stamps the date and time of day. The card is then passed to the dispatcher who assigns an appropriate vehicle to answer the call. The card is again stamped with the time that the call was assigned for investigation. After the call has been assigned, the card is placed in a status slot on the console which gives the dispatcher a visual display on the status map.

The status map is divided into alphabetical districts, such as Adam, Bravo, Charlie, etc. When the complaint card is placed in the status slot, the light in the district to which the vehicle was dispatched changes from green to red. At a glance the dispatcher is able to determine the number of men and vehicles he has on call and how many he has available for assignment.

When the vehicle assigned arrives on the scene, the officer notifies the dispatcher who clocks the arrival time. Upon completion of his investigation, the field officer makes notes pertinent to his investigation on a field investigation report while the facts are still fresh in his mind. The original of this triplicate report is later matched with the original call card. The second copy will be retained by the officer for his records.

TOTAL RESPONSE TIME

If the nature of the case is such that additional in-depth investigation is required, the detective division or juvenile and narcotics section will receive the third copy. The information on this field report will bring them up to date on what actions have already been taken in the initial investigation. From the information contained on these documents, we can determine the total response time to the call.

In addition to the time element, we also know the type of complaint (which is coded under the FBI Uniform Crime classification code), the name of the complainant, his or her address, and the area of the city in which the alleged violation occurred. The field investigation report and the disposition code give us full details on each call investigated by every officer in the field. This information can be used to evaluate the individual officer's performance, as well as that of the whole department, and provides information relative to the number of crimes by types in each of the districts within the city.

To bring about a well-planned program of selective enforcement, we place this information into the data bank, which gives us instant retrieval and, in some cases, a modus operandi to use as a lead in criminal investigations. The new telecommunications system, utilized in conjunction with the computer, provides a most sophisticated approach to law enforcement.

Until the new system was installed, the Greenville Police Department was served by a manually operated switchboard with eight incoming lines and 38 extensions throughout the department. In order to make an outgoing call, a caller had to signal the PBX operator for an outside line. He then dialed his call. For interior calls, the operator manually made the connections.

For many years this system had been adequate for the needs of the department, but, as Greenville grew rapidly and as the volume of police activities increased proportionately, we realized that along with new radio communications we would also need a new telephone system. Any new system would have to handle a greatly increased number of calls as well as provide adequate flexibility and speed, particularly if we should experience a major disaster or disorder.

Local telephone engineers designed a system specifically tailored for the department's needs and demanding workload. Under this system routine calls are handled efficiently, and in an emergency the system can instantly be expanded for speedy handling of a greatly increased volume of incoming as well as interior communications.

The entire system is now dial operated with 12 lines for incoming calls. Special features permit calls to be placed on hold or transferred to other phones and three-way conferencing to be established instantly by pressing a button. If an officer is already talking when he receives another incoming call, the equipment signals him with a tone to let him know he has a call waiting. As soon as he completes his conversation and breaks the connection, his waiting call rings him without assistance from the PBX operator.

Another important feature permits the console operator, should he receive a call indicating a major community problem or disaster, to throw a switch and immediately activate the emergency communications center. This emergency center provides four additional positions for answering incoming calls. These calls are answered quickly and automatically recorded. This information can then be radioed to police vehicles, ambulance, firefighting and other emergency service vehicles.

The new telecommunications system of our police department presents an outstanding improvement in the effectiveness of law enforcement in the city of Greenville.

THE WORK OF POW-MIA FAMILIES

Mr. DOLE. Mr. President. Col. Frank Borman's appearance before Congress today marks a high point in efforts to bring the status of U.S. servicemen captured or missing in action in Southeast Asia to the attention of the American public and the world.

For the past few years, these brave men and their situation have been the concern of an increasing number of individuals in and out of public life. That this interest has been stimulated, sustained, and expanded is due chiefly to the efforts of a group of women, wives, mothers, and sisters of POW's and MIA's, who have mounted an intensive campaign to generate awareness of their loved one's plight. Their efforts, as their cause, are unique in the history of our Nation, and their dedication, zeal, and determination are unmatched by any group or movement.

The story of these courageous and tireless women is told by Daniel St. Albin Greene in the September 21 edition of the National Observer. I ask unanimous consent that it be printed in the RECORD.

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

POW WIVES' NEW TACTICS SHOW SIGNS OF SUCCESS: ENEMY'S TONE CHANGES, MAIL COMES THROUGH AFTER FAMILIES ABANDON SILENT AGONY, DISCREET DIPLOMACY

(By Daniel St. Albin Greene)

For five years U.S. officials tried every tactic of traditional diplomacy—oblique negotiation, reason, castigation—in vain efforts to liberate American captives in Indochina, or at least find out what has happened to them. For five years nothing worked.

Finally, last year traditional diplomacy gave way to an unorthodox new initiative, and "wife power" gradually emerged as a formidable, though unofficial, diplomatic weapon. Consequently or not, more progress has been made on the POW front since the women of the missing men went public than in the previous five years. Developments last week were the most hopeful to date:

At the Paris peace talks, the Communists' Provincial Revolutionary Government offered an eight-point peace proposal grounded on a total withdrawal of U.S. troops by next June. The Viet Cong's most provocative offer: to open discussions on "the question of releasing captured military men."

A joint session of Congress was set for this week as "a manifestation of the unity of the American people and their deep resent-

ment over the manner in which prisoners have been treated." Former astronaut Frank Borman was invited to report on his recent travels to 12 foreign capitals in a Presidential campaign to generate pressure on the Communist Vietnamese to abide by internationally recognized standards of POW treatment.

Mail from North Vietnamese prison camps has picked up substantially. Members of an American antiwar group returned from North Vietnam last week with a bundle of 374 letters from prisoners.

Relatives of missing and captive men, and some Government officials, were clearly encouraged by these developments. Yet hope was wrapped in suspicion.

Behind this is a story of systematic inhumanity, mental torment, and courage by those who endured it all: the survivors of 1,576 GIs classified as POW or MIA (missing in action), and their families, who don't know which of them will ever return home.

THE QUIET APPROACH

The early years, when the relatives waited and worried in private, were the hardest. During the Johnson Administration—as an inconspicuous force of military "advisers" grew into a full-blown army—efforts on behalf of captured servicemen were cloaked in diplomatic secrecy. Fearful that the enemy might use any excuse to take revenge on downed airmen for the destruction done by their bombing raids, U.S. spokesmen seldom made public statements about the POW issue. W. Averell Harriman, President Johnson's imperturbable ambassador-at-large in charge of POW negotiations, went about his business tactfully, unobtrusively, patiently.

The quiet approach was loudly interrupted in the summer of 1966, though, after captured airmen were paraded through angry North Vietnamese crowds, and reports were circulated that Hanoi meant to try some captives as "air pirates." The ominous reports evoked pleas from the Pope and the United Nations, as well as a thunder of warnings from Washington. The strongest came from Richard B. Russell, chairman of the Senate Armed Services Committee, who vowed that executions of American prisoners would be answered by "the application of power that will make a desert of their country."

The threats of show trials soon subsided, and U.S. officials resumed their cool campaign to repatriate prisoners. Relatives were cautioned not to say anything that might aid the enemy in attempts to brainwash captives or weaken their morale.

There were other reasons to keep quiet. Public identification of a missing man who had somehow evaded the enemy, it was feared, might reduce his chances of ultimate escape. Public attention also could conceivably make things difficult for the family of a missing man: Some have been tormented by crank phone calls and letters, by harpies and charlatans, by seducers, by antiwar zealots.

To many wives, reticence simply made life easier. During a rare evening out recently at the Officers Club on Randolph Air Force Base, in San Antonio, Judith Blevins went into some of the social problems of being a POW wife: "For the longest time, I wouldn't tell anyone my husband was a prisoner. Occasionally I'd be asked about my husband, and I would say he was missing in action. Then I would have to explain, which would make the other people feel awful for even asking, and everybody would be terribly embarrassed."

The strategy of cool diplomacy was grounded on the official assumption that a prisoner-exchange agreement would be worked out before too long—after Hanoi had milked the POW issue of all its propaganda potential. History fed this attitude. After all, U.S. fighting men had never been held by a foreign power longer than the 3½ years America was engaged in World War II. American prisoners who survived the brutal conditions of captivity in the Korean War (38 per cent of the 7,140 captives had died) were repatriated within three years of the beginning of hostilities.

Recalls Adelyn Wilson, an attractive mother of three who has been waiting three years in San Antonio for her husband to come home: "When he was shot down, I felt, well, he'll be there a year or two. Everybody was hoping then that everything would be settled in one or two years. But now . . . I just can't see an end in sight."

Another reason for guarded optimism was that North Vietnam was one of 123 nations that had signed the Geneva Convention Relative to the Treatment of Prisoners of War. This treaty had issued from a worldwide recognition after World War II that the basic human rights of war prisoners should be protected while they were detained. At the very end of the treaty, however, are three "reservations" the Democratic Republic of (North) Vietnam recorded when it signed in 1957. One of these states that "prisoners of war prosecuted and convicted for war crimes or for crimes against humanity, in accordance with the principles laid down by the Nuremberg Court of Justice, shall not benefit from the present convention. . . ." It was an ominous footnote.

But by the end of 1968 and the Johnson regime, hope had dissolved into bleak despair. The diplomats were stumped, the families of missing GIs were desperate.

Inexplicably, for four years the Communist Vietnamese had ignored U.S. pleas for a list of American prisoners. They had consistently refused to permit inspections of their POW camps by neutral teams from the International Red Cross or any other body. They had refused to release sick and wounded captives. Most irrational of all, they had permitted only about 100 prisoners to write home.

All this was in flagrant violation of the Geneva Convention. Yet Hanoi has stubbornly denied that charge on the ground that the United States is invading North Vietnam without a declaration of war, thereby forcing its troops to be war criminals unqualified for Geneva Convention protection. (This argument ignores Article 2 of the treaty, which applies its provisions to any "armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.") North Vietnam, furthermore, has never been willing to exchange prisoners because it won't acknowledge that its troops are fighting in South Vietnam. The more than 36,000 inmates of South Vietnamese POW camps, including about 8,000 North Vietnamese soldiers, are "patriots" illegally detained, according to Hanoi.

The Nixon Administration decided that a new approach was needed. "It just didn't make sense to us to keep quiet any longer," says Richard D. Capen, Jr., legislative-affairs assistant to the Secretary of Defense.

BREAKING THE SILENCE

So in May of last year, Defense Secretary Melvin Laird held a press conference. "There is clear evidence," he declared, that the North Vietnamese are not "treating our men humanely." In his blunt statement and a supplementary briefing for newsmen, the stark facts of the POW outrage were laid out. From then on, as one Defense Department official put it, the case for war prisoners would be aired in "the court of world opinion."

Mobilizing public support for imprisoned GIs was not a novel idea, of course. The same notion had struck Sybil Stockdale a year earlier. An articulate, self-reliant blonde with four sons and an insuperable spirit, she was simply not cut out to passively sit around and hope for the best.

At a House Foreign Affairs Committee hearing last May, Mrs. Stockdale explained frankly why she had chosen to go her own way: "After I learned that my husband was being held a prisoner in North Vietnam, I tried to determine what his rights were as the captive of a foreign government. I was counseled by the U.S. Government that it was in my husband's best interests for me to remain quiet about the fact that he was a prisoner. I have never been able to determine the rationale for this policy. . . ."

She never paid much attention to it either. In 1967 she tried vainly to get somebody to bring the subject before Congress. Then she and 33 other wives in the San Diego area formed an organization to seek ways to help their missing husbands. By 1968, she was convinced that the best way was "letting the world know the truth about the rights of our husbands and sons as captives of a foreign government signatory to the Geneva Convention, and North Vietnam's total violation of its most basic tenets."

That's what Sybil Stockdale has been doing ever since. About the time the Defense Department was weighing the risks of a more aggressive POW policy, she was corresponding with other families about a matter of mutual concern: Since September 1968 the flow of mail from prison camps, which had been a sporadic dribble at best, had dwindled to nothing. Mrs. Stockdale's mail campaign instigated a deluge of telegrams to the North Vietnamese delegation in Paris, pleading for news of missing loved ones. By April 1969, the month before Mr. Laird's press conference, skimpy notes from prisoners were trickling in again.

Other local groups of POW families began sprouting up around the country. More and more women who had long concealed their strained emotions began making speeches, talking up the POW problem on radio and television, promoting write-Hanoi campaigns, and badgering Capitol Hill for more action.

Out of all this activity grew the National League of Families of American Prisoners and Missing in Southeast Asia, which opened a Washington headquarters in June in offices donated by the Reserve Officers Association, across from the U.S. Capitol. Mrs. Stockdale is chairman of the board. Iris Powers, the ebullient mother of a missing Army helicopter pilot, moved up from Florida to become the full-time national co-ordinator. The league, which has about 3,000 members, dispenses POW information, prods lawmakers and Government officials, maintains a communication network linging families of missing GIs, and is forming a speakers' bureau. Vice President Agnew donated $12,500 to the league from royalties he received from two companies producing watches and T-shirts bearing his caricature.

After years of waiting for diplomats to do something, the women were finally taking matters in their own hands.

Their Eurasian invasion began a year ago. Wives, kids, and parents of missing men began trooping to the North Vietnamese and National Liberation Front (Viet Cong) missions in Paris. Some were received cordially but coolly; other were harangued about U.S. "war crimes" and derided as dupes or agents of the U.S. Government. Many others have besieged Communist diplomats with letters, phone calls, and telegrams.

Last Christmas eve, Texas millionaire H. Ross Perot flew 58 wives and 94 children to Paris in a chartered jetliner.

Two comely young Air Force wives from Dallas were among the first to be received by the North Vietnamese in Paris. The memories of the encounter, shared in a recent get-together at Barbara "Bonnie" Singleton's suburban home, are bitter.

"I'm very emotional," acknowledged Joy Jeffrey, who did not know whether she was a wife or a widow at the time of the meeting. "When I saw the bitterness in their faces, I was terrified for my husband." Last May she received her first letter from Capt. Rob-

ert Jeffrey since Dec. 22, 1965, two days after his jet was blasted out of the sky on his third day in Vietnam.

Mrs. Singleton, whose husband's rescue helicopter crashed on his second mission, a few weeks before Bob Jeffrey went down, remembered that her hosts kept referring to the POW question as a "small matter." The visitors were advised to go back home, "gather the masses, and demand that all Americans leave Vietnam," she said. "They gave us the name and address of a man they were sure we had never heard of, and told us to contact him: Rennie Davis." (Mr. Davis, a Chicago Seven defendant and a major figure in the antiwar movement in this country, had helped arrange the release of three U.S. soldiers by the Viet Cong in 1967.)

Other wives have become unofficial globetrotting ambassadors in the widening campaign to galvanize public sentiment. Last December, Mrs. Stephen P. Hanson, Mrs. Roosevelt Hestle, Jr., Mrs. John K. Hardy, Jr., and Mrs. Arthur S. Mearns traveled some 30,000 miles seeking support from other nations. They were rudely rebuffed in Moscow. They learned in the Middle East that Israel and Arab nations promptly exchange prisoners, POW information, and sometimes even the bodies of those who die in captivity. In Vientiane, Laos, they were disheartened to learn that mail sent to GIs believed to be held in Laos was crammed in shoe boxes collecting dust in the rundown villa of the Communist Pathet Lao representative.

It remains to be seen what the women's campaign is accomplishing. Ross Perot, who has vowed to spend whatever it takes to get the men released, is convinced that the mounting public pressure is making an impact on Hanoi. "As a nation, the North Vietnamese have an inferiority complex," he told congressmen in May. "If you really pressure them on the issue, they will react. When I first began talking to North Vietnam, everybody told me to be polite. I was, and nothing happened. Finally, I told them, 'You are nothing but animals.' At that point, we started talking business, because they wanted to assure me that they were really humane people, a first-class nation, and they wouldn't mistreat these men. Making the treatment of our men a visible issue in the United States will bring the North Vietnamese to their knees."

Harsh reality indicates Mr. Perot is overly optimistic. The National Liberation Front repeatedly has insisted that the POW question can be resolved only as part of a detailed program it has proposed to end the war—with a total withdrawal of U.S. troops. Government officials theorize that the Communists plan to use the POW issue as their trump card when the diplomatic dealing reaches a climax.

Even so, the Communists' obduracy on some prisoner matters has softened a bit since the Government, and the women went public before Secretary Laird's May 1969 declaration, 638 letters had been received from 103 prisoners. At last count, 324 captives had been heard from.

The mail increase is largely due to an agreement worked out between Hanoi and an American antiwar group last December. This resulted in the establishment of the Committee of Liaison With Families of Servicemen Detained in North Vietnam, headed by Cora Weis, the wife of a New York City lawyer and a women's-liberation activist.

Mail regulations have been established too. Theoretically at least, each prisoner in North Vietnam is permitted to receive, and to write, one letter a month, and to receive one package of no more than six pounds every other month. Each message must be written on small notepaper with six lines.

Depending upon a "peacenik" group for the only mail delivery out of North Vietnamese prison camps is, to say the least, distasteful to many families. The Government is not happy with the arrangement either. But for the time being, the committee is the only mail channel available.

The Committee of Liaison released a list of 335 names that, Mrs. Weiss says, was verified by North Vietnam as the full roster of Americans it was holding last winter. The Defense Department insists it is not a complete list.

In fact, there is no way of knowing how many GIs are in the hands of Communist forces in Indochina. An official list of captives has never been provided by North Vietnam, the Viet Cong, or the Pathet Lao. The Defense Department tally is 1,576 missing or captured; some 400 men have been on the list more than four years. The department has reason to believe that 457 of the men are prisoners, 376 of them in North Vietnam. The other 1,119 are carried as MIA. The Government POW figures have been compiled from prisoners identified in propaganda material dispensed by Hanoi, letters from prison camps, and reports from men who have been released or escaped. Fourteen known prisoners, for instance, were recognized in a propaganda film of a POW Christmas service that was given to Rep. Roger Zion by North Vietnamese representatives in Paris last month. Among the filmed group was Navy Lt. Everett Alvarez, who has been a war prisoner longer than any American serviceman in history—more than six years.

Almost all of those known to be immured in North Vietnam are Navy and Air Force fliers. In contrast, little is known about the 796 men—most of them Marines and soldiers—who have been swallowed up by the jungles of South Vietnam and Laos. Only one letter has ever been received from anybody held in a VC prison camp.

Several GIs who got out have told about them, however. The best authority is Army Maj. James N. Rowe, who escaped in December 1968 after five years and two months of confinement in a jungle camp deep in the U Minh forest. He has related an incredible chronicle of near-starvation, frequent beatings, and almost unbearable loneliness. He spent most of his time in a cage about four feet wide, six feet long, and four feet high. At night leg irons were clamped on him. Other prisoners were kept in similar huts arranged in a semicircle around a central guard post, but they were forbidden to communicate with each other.

Prisoners in the north are held in less primitive circumstances, but their ordeal has its own peculiar brands of mental torture. These have been described by nine Americans who have been released by North Vietnamese, six in 1968 and three last summer. Each group was handed over to representatives of the American antiwar movement.

Far from these Asian pestholes where men waste away or survive on faith and memories, their women suffer, too, in different ways. The wife who's certain her husband is a prisoner has no way of knowing how long he will be gone. Will the children be grown up the next time he sees them?

Worse than her situation is the legal limbo enveloping the wives of men on the MIA list, such as Sharon White of St. Petersburg, Fla. Almost three years after Lt. Col. Edward White II died with two other astronauts inside an Apollo space capsule at Cape Kennedy, his kid brother, James, was shot down over Laos. Air Force Captain White—whose ambition had been to become the family's second astronaut—dropped out of sight in November 1969, and hasn't been heard from since. Yet Sharon White has not given up hope. Every month she writes four letters to her husband on the standard little six-line sheets, and mails each to a different place: the Pathet Lao representatives in Hanoi and Vientiane, and Laotian and American Red Cross headquarters. They are never answered.

"Even though it seems impossible," Mrs. White says, "I feel that somehow Jim will walk out of that jungle and someday knock on the door."

The troubles that beset POW families are more emotional than material. Most of the wives, being dependents of officers, are well provided for. An Air Force captain's salary, housing allotment, and flight and combat pay, for instance, add up to nearly $1,100 a month, and much of that is nontaxable. Men in captivity are usually promoted as soon as they are eligible (James Rowe was a first lieutenant when captured, a major when he escaped). Congress recently authorized an appropriation to compensate, at the rate of $5 per day, captured U.S. servicemen detained under conditions contrary to the Geneva Convention.

Dependents of missing enlisted men, most of whom have been killed or captured by the Viet Cong in South Vietnam, get along on substantially less than officers' families do. But all of them are entitled to free Government services, such as medical treatment and legal assistance, and they may live rent-free in some military bases if they choose. Moreover, casualty officers are always available to assist the families in every way imaginable, from helping a wife without a power of attorney sell or trade the family car, to taking a fatherless boy to a baseball game.

As always, the military services take care of their own. But what about the wife—or presumed widow—who has waited long enough, and wants to begin a new life?

HUNDREDS ARE PROBABLY DEAD

The tragic fact is that hundreds of the missing men are probably dead. One Government official working on the POW quandary says a "conservative estimate" would be that 500 of the 1,576 missing men are alive. Yet no missing man may be declared dead until after all prisoners have been repatriated and a thorough investigation made into the circumstances of his disappearance (389 MIA servicemen in the Korean War have never been accounted for).

For the woman who wants to remarry, military and Government officials can do nothing but counsel further patience. Therefore, some wives, depleted of patience, have turned their backs on the system and propriety. Nobody knows how many wives of missing GIs have remarried; one Defense Department officer says he knows of 10. Some went to Mexico for quick divorces; others simply classified themselves as widows on the marriage application, or filed affidavits stating that they believed their husbands to be dead.

A lot of other wives are at the end of their patience, too, but for different reasons. They cannot understand why the Government doesn't adopt stronger measures to get their men back.

Proclaimed Mrs. F. Harold Kushner at the House Foreign Affairs Committee hearing last spring: "I am tired of traveling, and I am tired of publicly baring my private anguish. And I am most tired of Presidential platitudes and congressional convocations. They no longer reassure me, and they have never brought any relief to the men involved."

She recommended, among other things, that no more troops be withdrawn from Vietnam until prisoners are released. Others have urged President Nixon to exert economic pressure to get friendly nations to stop doing business with North Vietnam until it agrees to abide by the Geneva Convention.

"If we are not going after a military victory," declares Louise M. Mulligan, "then our men should not have to spend another day over there. We don't want more letters—we want our men released, now!"

A STUDY OF RIOTS

Mr. McCLELLAN. Mr. President, in 1965, Eugene Methvin's article entitled "How the Reds Make a Riot," published in the Reader's Digest, won for the Digest

the coveted award for "public service in magazine journalism," given annually by Sigma Delta Chi. Mr. Methvin has now turned his award-winning article into a full-scale book-length study of riots.

I cannot, of course, say that I agree with each and every suggestion offered or viewpoint expressed by Mr. Methvin, but I can suggest that we who have responsibility in our governmental processes should become familiar with his work.

I therefore ask unanimous consent that a two-part study based on Mr. Methvin's book appearing in the Sunday News of July 22, 1970, be printed in the RECORD.

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

THE RIOT MAKERS

"In July, 1964, New York's Harlem exploded into a fiery riot, and in quick succession six other cities erupted. In the next three summers 105 major urban riots in almost as many cities occurred. Then, in April, 1968, in the 10 days following Dr. Martin Luther King's assassination, 125 cities erupted at once. Federal troops had to be sent into Washington, Baltimore and Chicago. In the nation's capital smoke from the flaming blocks blotted out the Capitol dome in broad daylight . . .

"The riot era had come home to America."

—From "The Riot Makers," By Eugene H. Methvin.

(By Henry Lee)

In "The Riot Makers," a massive, 538-page book published by Arlington House, Eugene H. Methvin, a respected journalist and editor, explores some of the causes behind the holocausts. Not the amply-treated socio-economic causes, but his own controversial thesis about "the planned climatizing and incitement and even staging of civil commotion."

"There is in our day such a phenomenon: a systematic technology of subversion, hate propaganda and social demolition," he warns.

True, Methvin readily acknowledges, there are "the failures of generations long past" and the failures more recently of bureaucracy and succeeding leaders of both parties to foresee the shattering impact of the Tractor Revolution "and write agricultural and job training programs and antidiscrimination laws to correct the horrendous human dislocations it entailed."

You also can't get away from the fact that the riots erupted *"because there were those who wanted them to come about, who worked to bring them about and who did everything in their power to cause them."* (Methvin's italics.)

For example, just weeks before the four-day Newark riot of July, 1967, which killed 23 and did $15 million property damage, Gregory Calvert, national secretary of the Students for a Democratic Society, boasted to a reporter:

"We are working to build a guerilla force in an urban environment. We are actively organizing sedition."

This once at least, SDS was speaking the truth. Tom Hayden, its chief hot-head, and ghetto with their trouble-making front, "Newark Community Union Project," and as a pre-conditioner to riot, Methvin writes:

"Always there was the pervading theme of self-righteous hate and the systematic dehumanization of the chosen hate targets, representing 'The Establishment.'"

SDS cannot claim exclusive credit, of course, for this urban tragedy, but its expertise was an important factor. As a classic example of its work, take the siege of the Oakland Induction Center the following month, Methvin citing an analysis of the operation later in the SDS–SNCC newspaper, *The Movement*, writes:

"Jeff Segal, the Chicago headquarters representative, reported how the SDS organizers planned paramilitary action, complete with mobile walkie-talkie leadership teams and, operating with a screen of some 10,000 anti-draft demonstrators, seized 22 blocks in downtown Oakland, erected barricades and fought pitched battles with police.

"'We experimented with tactics that involved direct conflicts with the duly constituted forces of the law—cops. It was not guerrilla warfare or armed insurrection, but carried all the seeds for all the elements we will need when, indeed, our time does come,'" Segal wrote.

Modern industrial societies demand mobility from their labor force which frequently stretches and breaks the ties of family and community. Methvin observes. Thus, these societies spew up "political psychopaths filled fith free-floating frustration and hate."

"Perhaps significantly, Tom Hayden is the product of a divorce-broken home," he points out. "He lived with his mother alone from adolescence and in high school was a behavior problem for his teachers."

Methvin traces the roots of "mass manipulation" back to the 18th century. He calls the end product "of 175 years of cultural-technological evolution" in this mob-rousing science "the Leninoid, the graduate engineer in social demolition." He writes warningly:

"By the hundreds these Leninoids are crisscrossing America and colinizing in every major city, a whole army of Typhoid Marys attacking the very fabric of constitutional democracy and spreading an epidemic of apocalyptic expectations among the nation's youth.

"By no means all these people are members of the world Communist conspiracy, so-called, who report nightly to the Kremlin or Havana or Peking via secret radio. It's not that simple any more, if it ever was . . . Today we have a whole array of people who use techniques of Lenin without his ideology.

"They are a new breed of mass media men: conflict managers, professionals in hate propaganda and organization, hidden persuaders, image breakers and climate makers."

Methvin identifies some as ex-Communists "who shed their ideology but not their technical training," some as "just on-the-job trainees" working "with well-coached young Communist professionals like Bettina Aptheker." Some, like Stokely Carmichael and Lee Harvey Oswald, studied Marx on their own.

Among them are opportunists and "compulsive revolutionaries" who "purge their unresolved compulsions, frustrations and deep complexes," for whom any symbol of authority "from the President to the cop on the corner is a convenient lightning rod." There are also the "modern-day nihilists" who hope "to see some sort of Armageddon send our world up in flames" and "the philosopher-thugs" who "enjoy disorder and violence because these are signs of the approaching Kingdom Come, and they recite Socrates, Thoreau, Marx and Mao to justify their maraudings."

Sterling Tucker, director of the Urban League in Washington, has recently warned that "the tools of protest and demonstration are being prostituted and otherwise frighteningly, dangerously misused in a growing degree." Tucker deplores amateurs who use these techniques "not as tools, but as a lethal weapon, buck-shooting everywhere aiming at no specific target, just shooting wildly hoping that some of these shots will hit some mark.

"Others are using these important tools of change as therapeutic devices to release their anger and hostility against undefinable society; a non-specific 'they.' Just as all Negroes were once the 'they' of too large a segment of the white community, 'whitey' has become the 'they' of a growing element of the Negro community.

"Then there are those who use the once-nearly-sacred tools of protest and demonstration for purely personal gain, for their own recognition and self-aggrandizement. Such people are the most dangerous of all. For their actions are skillfully but maliciously calculated."

Trouble-making has become such a major occupation, as well as preoccupation. Methvin notes, that SDS is developing professional revolutionaries "who can work at the job of disruption full time, supporting themselves in the process.

"SDS headquarters distributes a catalog of 'Vocations for Radicals' listing scores of leftist operations offering jobs, including even radical community action agencies financed by the federal Office of Economic Opportunity.

"The ultimate aim is to have hundreds of nonprofit enterprises—bookstores, newspapers, record shops, radio stations, poster manufacturers, print-shops and sales outlets—in dozens of communities, supporting two or three people each in full-time propaganda and organizational warfare, climatizing America for disruption."

Last summer, a few experiments were conducted on infiltration of industrial plants through seasonal jobs with the hope of later developing a student-worker alliance. "Detailed instructions were given for faking character references and concealing the fact that the applicant was a college student," Methvin reports.

The Leninoids have also learned to stage-manage what Methvin calls "media-produced riots." He charges that "through moderate amounts of stimulation, using press, radio and television, they can instigate massings of pathotypes and vast upheavals." He cites a lunch-time sit-in by a couple of dozen militants at Berkeley in October, 1964. The coverage by TV cameramen, on hand in advance, "drew an estimated 5,000 people by sundown."

In addition, there's the radical-hippie "movement media," its backbone consisting of about 200 "underground" newspapers with an estimated circulation of more than one million. Methvin reports:

"Obviously many underground publishers are simple entrepreneurs profiteering on 'flower power,' bohemianism and just plain smut. Others are campus radical dropouts, true believers, preaching the apocalyptic-messianic SDS doctrine that American society is hopelessly corrupt, dominated by a few imperialistic 'exploiters' and ripe for revolution and Utopia.

"Police are conveniently referred to as 'fascist pigs' or 'psycopaths in blue.' Cartoons feature college presidents and other public figures [before his retirement, a favorite hate target was President Johnson] wearing swastikas; and classified ads commonly solicit partners for all sorts of sex activity."

Though now faction-split, the Liberation News Service sent the first alert to the "movement media" that the Democratic National Convention in Chicago was to be a target of disruption—and the announcement went out seven months before the disorders.

"Obviously, in the eyes of the radical practitioners themselves, *the movement media are not simply communications media in the journalistic sense," Methvin stresses. "They are command and control channels of insurrectional operations."* (Methvin's italics.)

In digging into the many causes behind the disorders wracking America, Methvin has

pinpointed some dozen different types of individuals who help cause riots and keep them going.

In this rogues' gallery, he includes "climate makers," young rowdies and criminals, "sandbox revolutionaries," rumor spreaders, terrorists and haters. But also implicated are the "igniters" who spark the budding trouble, vacillating civil authorities and paralyzed law enforcement authorities. Riots aren't necessarily spontaneous outbreaks, he has found.

Take the "climate makers." They are "career protesters and extremists," the people who tramp the nation with stock lists of "grievances and demands"—thus "supercharging the climate with revolutionary rhetoric."

There's Rap Brown, of the Student Non-Violent Coordinating Committee, urging "You gotta stop looting and start shooting." And Stokely Carmichael telling a Harlem audience at a SNCC fund-raising dinner, "We have to move from Molotov cocktails to dynamite."

"I'm for splitting up in twos and threes, killing the mayor, getting the utilities and poisoning the goddamn water," cried San Jose State Prof. Harry Edwards, organizer of the Negro boycott of the Olympic games.

And there was right-wing, white race supremacist Connie Lynch haranguing audiences nightly in Baltimore's Patterson Park. The result? Totally predictable. White teenagers raced through the streets to beat up Negro pedestrians and stone motorists.

Once the climate of hate is established, enter a new element:

"Teenage hoodlums and habitual criminals with long records of tangling with the law are the cutting edge of every riot," Methvin has ascertained. "A whooping 53% of the 10,771 arrestees in the 1967 summer disorders in 16 cities were under 25."

Toledo Police Chief Tony Bosh found "a very small minority of the minority group" responsible in his city's three-day eruption. Of 126 adult rioters jailed, 105 had records averaging six arrests each. Every one of the 22 young adults jailed in the first three hours had records. They averaged only 20 years old—and had three prior arrests.

"Virtually every one of the 200-odd Watts riot firebugs the arson bureau identified had prior felony records stretching back into their early teens," Methvin adds.

The "igniter" may be a drunk, a reckless driver, a fleeing thief, with politics the last thing on his mind. Then, again, he may be a provocateur.

And, always lurking in the ghetto to translate simple trouble into escalating violence are the "sandbox revolutionaries," as Methvin calls them, "a whole new generation of radicals [that] has adopted the Leninist methodology."

In July, 1966, after a white bartender in the Cleveland ghetto had ejected an unruly Negro patron, a four-day riot killed four and required a call-out of 2,000 National Guardsmen to restore peace. How had the trouble flared up so quickly and burned so long?

An investigating grand jury, which listened to 40 witnesses, found that the Revolutionary Action Movement and Deacons for Defense had been indoctrinating youth "to focus their hatreds." When the trouble came, the jury reported, the riot advance guard "were in the main young people obviously assigned, trained and disciplined in the roles they were to play."

Another incendiary device is the rumormonger. "No riot ever occurs without the aid of rumor," Harvard's Gordon Allport, a social psychologist, has written. Methvin further explains: "Wedge-driving rumors enable one group to justify violent attacks on another by depicting their victims as inhuman beasts."

Here is a case history, as a Senate investigation revealed, of how rumor—false rumor—triggered long-planned violence.

A "Leninoid nucleus" of about 35, calling themselves "Friends of SNCC," tried with indifferent success for several months to stir up the predominantly Negro campus of Texas Southern University in Houston in May of 1967. Cries of "police brutality" and similar off-campus slogans yielded few results.

Then the national president of the Communist Party's DuBois Clubs moved into a YMCA a block from the campus and held nightly meetings with the militants. They hit on such campus issues as coed dress regulations, dormitory hours and the like.

"It was then that the activities and issues began to pick up momentum," Dr. James B. Jones, dean of students and a psychology professor, later testified.

"Incidents became more serious, profane, hate-advocating and generally disruptive. We would come on campus in the morning to find the campus flooded with mimeographed leaflets with certain demands which had never been made to the administration.

The militants organized a class boycott and a SNCC organizer knocked down a woman English teacher who tried to enter her classroom. They protested "bad food," raiding the campus cafeteria and knocking the trays of dining room students onto the floor.

"After a month of this, then they were able to mobilize students for off-campus issues; on the fatal day, there was a mass picketing of a garbage dump adjoining a Negro neighborhood," Methvin reports.

"That night, moments before the rioting began, the agitators harangued a campus protest rally with, 'They have shot a 5-year-old Negro child! What are we going to do about it?' Actually, that afternoon, one white youngster playing with a pistol accidentally wounded another, also white."

No matter, the riot was on. And, sadly, Texas Southern chalked up the first riot death of the 1967 season that was to record 84 fatalities, not to mention half a billion dollars in property damage across the country.

Once the malcontents have fanned the flames, curious, loot-hungry crowds, weak in moral fiber perhaps but not essentially vicious, join in. But, as Methvin points out, "by their very presence, [they] distract the police from the violent few."

Many of them are simple victims of mob hysteria. In Detroit, the riot researcher reports, a matron stood for 10 minutes in a supermarket doorway yelling: "Don't do that!" at youngsters who were looting—"and then she started grabbing booty herself."

"In both Watts and Detroit," he adds, "hundreds swept up in the psychological epidemic later phoned police to return booty to the rightful owners. A typical report: 'There's a color television set on my front porch and I have no idea how it got there!'"

Of course, the kooks, criminals and political wild-eyes could not capitalize on riots if there were not deep-seated, legitimate grievances.

The Tractor Revolution, which slashed labor needs, uprooted Negroes by the hundreds of thousands, Methvin records: "The compression of an estimated 12 million Negroes of rural background into the cities after 1940 was one of the most wrenching cultural changes and mass migrations in human history."

As a result, in 1964-65, almost a fifth of Newark's male Negroes had sunk into "anomie," according to research by the Rutgers Center for Urban Studies. In this state, individuals are disorganized, frustrated, bitter, and seek desired ends by spastic, pointless acts, rather than by planning and rational action.

"These Newark men were totally unorganized, unattached, amoral and alienated," Methvin notes. "They 'reject all forms of culturally-sanctioned, remedial agencies, including political parties, Negro action groups, legal personnel and state agencies.' Instead they had substituted a desire to 'fight back' or a belief that 'the situation is hopeless.' In short, declared sociologist Leonard Zeitz, they hated everything."

Very much along the same lines, there was a crime-delinquency study in Los Angeles just before the Watts riot—after which the scientists discovered the study "had delineated the riot zone block by block."

"By five menacing indicators of social disorganization it stood out like a fierce, flaming prophecy," Methvin writes.

These indicators were low family income, Negro population concentrations above three-fourths, population density above 10,000 per square mile, an extreme school dropout rate and a high arrest rate for both juvenile and adults.

"From the wild Irish slums of the 19th century to the riot-torn Negro slums of today," says Daniel P. Moynihan, urban affairs aid to President Nixon, "a community that allows large numbers of young men to grow up in broken families, dominated by women, never acquiring any rational hopes for the future, asks for and gets chaos. Crime, violence and disorder are not only to be expected. They are very near to inevitable. And they are richly deserved."

But most surprising—and heartening—is that despite the deplorable conditions on which the riot-makers make bloody capital, the law-abiding citizens remain well in the majority.

A Detroit Free Press-Urban League survey showed that even among those abroad during the riot, the counter-rioters actively working against violence outnumbered the participants by almost half. In general, they were more mature, better educated, had higher incomes.

"They failed because police did not back them up in the early stages by forcefully removing the violent few hoodlums and thus deterring the more timid looters who followed in their wake." Methvin charges. "Time and again on 12th Street, young toughs yelled down counter-rioters and imposed their reign of terror."

Nonetheless, from the very first hour, Negro citizens phoned the Detroit police to report stolen goods, caches of guns and firebombs and looting outbreaks. They volunteered personal services, and homeowners toting shotguns warned they would shoot anyone stoning the firemen.

"Both the Watts and Detroit surveys showed that a solid majority of riot area residents stayed home," Methvin discloses. "There simply was no basic and widespread breakdown of respect for law and order. Indeed, quite the opposite. An overwhelming 81% of Detroit's nonrioters thought police should have been tougher from the start, and *even those who admitted some riot activity [mostly looting] thought so too—by a 60% majority!* (Methvin's italics.)

"Clearly, the riot was a temporary reign of terror by a violent few who pushed into dominance because of police inaction. And the ghetto community's response—even a majority of those who joined the 'carnival'—was an urgent plea to civil authorities:

"Please, don't let it happen again!"

THE RIOT MAKERS

(By Henry Lee)

On a sultry Saturday night in August six years ago, a domestic argument in Philadelphia touched off an arrest and rioting. About an hour later, on the testimony of a Negro clergyman who lived in the neighborood, a gang of men with sledgehammers, axes and crowbars showed up to demolish store fronts along several blocks. All were strangers.

"They conducted a systematic wrecking operation, designed to provide an irresistible invitation to loot for the poor people who lived in the neighborhood," charges Eugene H. Methvin in "The Riot Makers" (Arlington House; $8.95; to be published Sept. 30), an exhaustive study of the disturbances that have been wracking America's cities.

"It worked. The looting spread so rapidly that, to avoid wholesale slaughter, the police forces withdrew entirely, sealed off several dozen blocks of the inflamed area and let the property destruction proceed unchecked until morning. The violence lasted two days, causing two deaths and 339 injuries."

Without scanting the socio-economic causes of rioting, Methvin propounds the theory that "totalitarian world changers," as he calls them, are also responsible for fomenting and prolonging the deaths, injuries and property destruction.

"Their goal is to destroy America as we know it today in the hope that they can pick up the pieces and put them together into a perfect society, just as Lenin sought to destroy Czarist Russia even at the price of cooperating with Kaiserist Germany," he writes. "They are totalitarian destroyers, demolitionists."

This dangerous new breed of troublemaker has learned from the Communists and often cooperates with them. Many, in fact, are "red diaper babies." Methvin cites a survey of New Left youngsters at 36 campuses by pollster Sam Lubell. He found 17% had a radical family upbringing.

There are also the old-line subversives, "scavengers of discontent," like the Communist Party and its recent offshoot, the Maoist Progressive Labor Party. But the majority of the riotmakers aren't Commies in the sense "of belonging to a disciplined political party that responds to foreign dictation," Methvin has found.

"They are, rather, something new under the American sun: a truly indigenous breed of American radical, and hence far more dangerous than the conventional Communist since they are harder to deal with and identify and defend against."

Methvin cites research findings in Watts, Newark and Detroit that the people who riot "do so because of a state of mind. Social scientists could find little difference between those who rioted and those who did not, in such factors as income, education and employment.

"Indeed, 80% of those arrested in Detroit had stable jobs averaging $115 a week; in Newark, three out of every four arrestees had jobs. But one outstanding difference set those who rioted apart: *They were people filled with hate, not only for 'Whitey' but for other Negroes and, seemingly, the whole world.* (Methvin's italics.)

"For from despairing they were young men who see great possibilities for 'the good life' in America and want instant millenium. They showed a disproportionately high degree of influence by the most militant hate groups such as SNCC and the Black Muslims.

"The rioters evidently marched to the drummers who are most actively advocating a radical reorganization of American society and the Negro's place in it," a UCLA analysis of Watts rioters concluded."

As "a conscious preconditioning program" the author has found, the "New Left Leninoids," as he characterizes them, uses a sort of "3-D" Rx. He quotes one authority as calling them desanctification, disruption and disengagement.

Actually, according to Methvin, desanctification is merely "the rationale for attacks on the authority of the law the economic system, of parents, elected leaders, religion. 'Desanctification' is modern nihilism the first step toward anarchy."

"In 'disruption'" he goes on, "every institution through which public authority is exercised is an open target: police, armed forces, the family, school university corporation, bank church." And "disengagement" means separating people from "the system" and its sets of values rewards and punishments.

But the "3-D" program is merely to set the mood, and the New Leftists are far too cautious to let it go at that, just hoping that riots may result. Methvin's research has disclosed that they have developed a number of sophisticated techniques for the care and feeding of disturbances.

As an example of their up-to-the-minute approach, there's their use of walkie-talkies to direct the movements of riot agitators and to message headquarters. (In the days before transistorized walkie-talkies, Methvin reports, pigeons were sometimes used, and he cites the plight of one Red riot chieftain caught with a cageful of them. "He claimed they were symbolic 'peace doves,'" the author notes dryly.)

Whatever the cause of the rioting, these techniques are employed to accelerate and prolong the trouble. From "bravadoes" to "medical teams," from "banner carriers" to "police baiters," there are some eight or nine different riot roles, Methvin finds.

The "bravadoes" act as a loose bodyguard for the internal command and, in moving processions, carry stout wooden staves "bearing placards as camouflage." There are also "shock guards," armed with blackjacks, pipes and staves, who wait in reserve or, with moving columns, march along on the sidewalk where the spectators screen them.

"Only if police attack do they jump in as reinforcements, providing a sudden blitz to divert and disrupt long enough to allow an orderly retreat," Methvin says.

The cheering sections consist of "talented and loud-mouthed agitators," while the "banner carriers" also serve the purpose of spreading the propaganda message—plus a tactical purpose. "Key agitators keep close to designated banners where messengers from the internal or external commanders can quickly find them," Methvin reports.

Squads of sign painters daub slogans on walls and buildings, where cameramen—including New Left photographers—snap them. These slogans "will show up in the news pictures around the world and endure when the uproar is over," Methvin says.

And to provide photographic "proof" of "police brutality," he charges, police horses are attacked with razor blades on the end of placard staves, jabbed in their flanks with hatpins or lighted cigarets, or given a whiff of red pepper in their noses. This makes them "rear and rush through the crowd" while the cameras click.

Have you ever seen newsreel photos of medical "volunteers" selflessly ministering to the casualties in the heat of the disorders? They may not be as neutral as they seem, for Methvin writes:

"Where a violent 'confrontation' is planned, radical planners may arrange to have on hand teams of doctors, medical students and nurses whose sympathies and willingness to cooperate is assured. In their white uniforms, with red cross armbands, and carrying stretchers, they are usually allowed to cross police lines, and are hence valuable for reconnaissance and communication.

"Moreover, afterward they can supply affidavits attesting to 'police brutality,' and most people will accept such testimony as coming from impartial medical observers, while in fact it is from secret Communist Party members or known fellow travelers."

Melodramatic as such antics may sound, the New Left "Leninoids" are capable of them—and more. Here is a case history in the radicalization of an entire neighborhood with the inevitable result—riot.

When the Progressive Labor Party Reds moved from New York to set up a West Coast base, they methodically researched census figures on San Francisco to determine the most explosive slum for their organizational deployment. On the basis of factors like racial composition, poverty, slum crowding, they chose the Mission district and organized a so-called "tenants union."

The tee-off was a sloganeering campaign "to raise the consciousness of the state as their enemy," according to Progressive Labor, the official magazine, which described the entire how-to process.

PLP organizers began knocking on doors and building up front groups with "Hate City Hall" and "Hate the Slumlords" as slogans. Housewives were prodded into a march on city hall to demand a neighborhood traffic light, Progressive Labor explained: "Such conflict with city hall must be created if the people on the street are going to learn any lesson at all."

Then PLP's organizer John Ross, won election to the federally-financed "Mission Area Anti-Poverty Board." According to Methvin, the election was staged "at a street affair hastily convened by paid 'War on Poverty' staffers," with Ross placing third among 27 candidates for eight seats as representatives-at-large. Actually, of 80,000 potential voters in the community, only 219 bothered to register—and less than half of these actually voted.

Shortly, the PLP-front "tenants union" was parading and shouting slogans like "Down with Slumlords!," "Stop Evictions!" and! "High Rents Must Go!" The union also belabored San Francisco Traffic Engineer Charles Lang over a neighborhood light and threatened "direct action at the intersection if other methods fail. . . . We'll back up traffic all the way to Oakland if necessary."

The inflammatory mood patiently established, the culmination came on Sept. 27, 1966, after a policeman shot and killed a fleeing Negro teenager. Three days of rioting erupted, and 4,000 police, state patrolmen and National Guard had to be called out.

"Maoist Ross was there to lead a teenage picket line around the National Guard armory as troops mobilized to support the police, leading them in such slogans as 'National Guard Go Home!', 'Get Out of Vietnam!', 'Get Out of the Mission District!'" Methvin reports. "Predictably, the demonstration ended in bloodshed."

The same systematic radicalization goes on among college and even high school students. Cynically, Nick Egelson, an organizer for Students for a Democratic Society, explains: "Our strategy is simple. Take a small issue and immediately raise the question of student power."

"Almost all students are getting screwed by imperialism somehow—the draft, crappy courses, high tuition, oppressive rituals and requirements, etc. . . ." adds Allan Spector, the New England regional organizer.

"Our role in these struggles should be to stand with the students, while making the point that their exploitation is not accidental, but rather is being committed by an enemy who is consciously exploiting other people and who must be fought collectively, for the liberation of all."

Methvin, attending a workshop on high school and college organizing at an SDS convention, found the proficiency of these "sandbox revolutionaries" in sloganeering for campus disruption to be "sadly amusing."

"In the high schools, raise demands to wear long hair and miniskirts, and then politicalize them," a California State College SDSer said.

"Make small demands one at a time, and when the administration tries to draw the line, BANG! You've got an issue," added a Marylander.

At Wisconsin, still another delegate reported, dormitory students were organized "around rules, and then it was easy to move them on to such issues as the university's relation to Chase Manhattan Bank." (Its endowment funds owned some stock.)

A workshop leader on high school agitation urged that the children be shown "the schools are the mechanism for holding people as slaves, 'knowledge factories.'

"Show them how America is sexually repressed by the people who have power, as a part of the working conditions to keep the workers docile. Organizers must show students how this works and help them throw off their repression.

"Why won't school medical departments dispense free birth control pills to all? Why do they regulate dress length?"

The way SDS goes about recruiting high school students is eye-opening. Methvin describes it as "a process of grabbing minds not yet formed and shaping them to fit the radical movement." Here is how a former SDSer outlined the technique to him:

"We always recruited by letting the prospect talk first to find out what his 'big thing' is so we could use it as a hook.

"One young prospect I knew, an intellectually gifted Negro athlete, quarrelled with a white basketball coach. An underground press reporter, actually an adult secret Communist Party member of our SDS chapter, 'interviewed' him and recruited him by showing how 'liberal' radicals are and how he was a victim of 'the white racist establishment.' . . .

"We would get a budding journalist involved in an 'underground newspaper,' encourage him to print defamation and obscenity and then embroil him in a 'free speech' fight with high school authorities."

Says one close observer of New Left radicals: "I have seen young people become propaganda addicts by 'mainlining' hate from the underground press. They actually get observable personality changes, just as if they were shooting heroin."

After watching two years of disruption on the San Francisco State campus, Professor John Bunzel, head of the political science department, reached a similar conclusion.

"Some students are sort of 'hooked' on riots," he reports, "and if they don't participate in a demonstration every day, they have withdrawal symptoms."

Worse, school officials have all too often let these festering situations build and build to the riot-crisis stage through their own temporizing and appeasement.

Methvin cites the atrocious SDS demonstration against then-Defense Secretary Robert McNamara at Harvard on Nov. 7, 1966, for which Dean Monro later apologized. But when reporters pressed him on punishment of the offenders, the dean huffily retorted, "I see no reason for punishing students for what was purely a political event."

"Give me a dean who calls that a political event," said cartoonist Al Capp in a neat deflation of academic pomposity, "and I'll give you a dean who'll call rape an act of love and arson an act of urban renewal."

At Cornell, Methvin points out, President James Perkins condoned a long buildup of escalating lawlessness before the final armed revolt in April, 1969. Once, he tried to appease black militant sitters-in with doughnuts and coffee—which were smashed against the wall. When the Afro-American Society demanded money for bongo drums, he got up $1,700 and sent two black leaders to New York in the university plane.

Despite such shameless appeasement, he was once physically yanked off a speakers' platform and, Methvin writes, "By spring Perkins was an object of open derision. Student militants marched around sporting sheathed knives and prudent students were afraid to stroll the campus quadrangle at night."

A special trustees' investigating committee concluded that the university's failure to enforce disciplinary procedures over a long period led to the April eruption. The committee said:

"This committee has the strong feeling that, had discipline at Cornell been enforced over the last two or three years, simply by fair but firm adherence to the disciplinary code and judicial system in force, a tragic event of the dimension of the Willard Straight incident might well have been avoided."

In all fairness to dithering college administrative officials, public officials reacted with the same tragic appeasement. Methvin makes the flat accusation:

"The civil authorities charged with maintaining the peace and good order of American society in the 1960s permitted a dangerous climate of violence to develop. They defaulted in the city halls, courtrooms, state houses, all the way up to the White House and Supreme Court, unleashing utopian extremism and simple savagery.

"From the first ghetto riot in Harlem in July, 1964, and the first campus riot at Berkeley in October 1964, the response of the Johnson administration in Washington down to those in most city halls and colleges was to repeat the liberal litany that 'we must seek to remove the causes of discontent.'

"Implicitly of explicitly, the litany always involved conceding justice and reasonableness to the perpetrators of violence—hence condoning and even encouraging their violent behavior."

Before the November, 1964, election, Methvin charges, the Johnson administration and the New York City administration of Mayor Wagner "collaborated" to prevent the police or FBI "from exposing the full role of such communists as William Epton in climatizing and contributing to the Harlem explosion."

In part, Methvin asserts, the weak response of public officials "stemmed from an obsession with achieving 'racial justice' and paroxysms of masochism over past wrongs, real and imagined.

"In part, it was the rawest kind of racial politics and political profiteering. And in part it was simple neglect. But through carelessness, witlessness and willful political design, the authorities promoted anarchy."

Take the police. "Inexperienced and undermanned for riots," they fed the fuels of chaos, Methvin found, "first by bumbling or inaction and then by overaction."

At the time of the Detroit holocaust, "from the man on the beat to Mayor Cavanagh, the authorities were petrified. News accounts of Newark and years of 'police brutality' sloganeering had arranged their minds for inaction.

"The Mayor and Police Commissioner, called at 5:10 a.m., did not go out on 12th St. They stayed in their offices, mesmerizing themselves with the myth of a monstrous mob that simply did not exist at that time."

As one sergeant later explained the paralysis to Methvin, "Each one of us was thinking if we tried to make an arrest, we might be the trigger—and go down in history like John Wilkes Booth."

But, ironically, at least one admitted looter was outraged by this collapse of the police.

"What have we *got* them for?" Methvin quotes him as exclaiming. "They *could* have stopped it. I'd have an armful of clothes or a bagful of diamonds and a cop would say, 'Having fun?' I'd say, 'Plenty,' and go on. They seemed to enjoy seeing 12th St. tore down."

Similarly, in the early stages of Philadelphia's 1964 outbreak, "riot police simply quit," and the second day word spread, "North Philly is wide open!" Vainly, the author notes, Negro community leaders tried to have the mayor enforce "law and order" and either deputize 5,000 of them as counter-rioters or summon the National Guard.

Actually, he notes, as situations worsen and communications and chains of command go awry, the police and National Guard "are frequently little more than a mob themselves." In Newark and Detroit, Guardsmen and police, "panicked by 'sniper' fire that was often shooting by other panicky lawmen," loosed volleys killing innocent persons.

What is the answer to riots and riot-makers?

Methvin offers this five-pronged attack to be mounted by men of goodwill in government and out:

Economic and social action against discontent. "We can make war on the enemy's socio-economic base, the discontent and underdevelopment that provide him with issues to exploit . . ."

Psychological action against ideology. "Through climate-making campaigns we can destroy the enemy's philosophical and psychological bases of action . . ."

Police action against cadres. "Where the subversive organization resorts to open incitement to violence, guerrilla warfare or terrorism, we can track the insurgent down and kill or capture him . . ."

Counterorganizational warfare. "We can attack the subversive organization's activities by exposing and spotlighting its deceit and violence, creating a hostile populace which in turn puts psychological pressure on the insurgents to adopt democratic methods for social changes and 'revolutionizing' society."

Preemptive organizational warfare. "We can deprive the enemy of the opportunity to exploit social stagnation and political disorganization by preempting his opportunity to recruit and mature his own organization. We can give the ambitious and discontented young men some avenue to express constructively his urge to modernize his society and to pursue his ambitions . . ."

"Certainly we cannot stop firebombing on Springfield Ave. or 12th St. by urban renewal, minimum wage laws, job training and anti-discrimination statutes," Methvin feels.

"We can stop them by preventing the congregation and coalescence of a criminal insurrection; and by arresting the early lawbreakers before the moral holiday is signaled and the drawing effect creates a tornado of anarchy."

George Washington, who'd been quite a revolutionist himself, phrased it best of all when the weak young national government was threatened in 1786 by Shay's Rebellion in Massachusetts.

"Know precisely what the insurgents aim at," the Father of His Country said. "If they have real grievances, redress them if possible; or acknowledge the justice of them and your inability to do it in the present moment.

"If they have not, employ the force of government against them at once . . . Let the reins of government then be braced and held with a steady hand, and every violation of the constitution reprehended."

The rebellion was put down.

AMERICAN TECHNOLOGICAL KNOW-HOW—THE WONDER OF THE WORLD

Mr. PERCY. Mr. President, Americans have their faults and receive criticism for them, yet we are universally admired for our technological successes. People the world over marvel at the complicated machinery and sophisticated products which we turn out. Largely responsible for our excellent reputation in technological expertise is the machine tool industry.

Appliances, cars, typewriters, planes—none of these would be available if it were not for the machine tool industry. Without highly sophisticated, precise machine tools, we could not possibly provide the

housewife with electric ovens, washing machines, refrigerators, or blenders. A trip to the moon would still be a far-fetched dream, as would our nuclear submarine fleet, which is the backbone of our defense deterrent.

Machine tools are essential to an industrialized economy. Indeed, without them, we would still be at the level which existed during the Civil War. In this industry are 500 different types of machine tools, produced by 300 machine tool companies, of which 40 are located in the State of Illinois alone. The machine tools produced by these companies mean increased productivity. Increased productivity means higher wages, higher profits, and lower prices for the consumer. Higher profits mean more jobs. It means less tedious and physically exhausting work; it helps to provide equality of working opportunities for women.

We owe a great deal to the skills, enterprise, and dedication of those in the machine tool industry. I, therefore, consider it highly appropriate to pay tribute to this industry during the week of September 20 through September 26. Congress has passed and the President has signed a joint resolution proclaiming September 20 to 26 "National Machine Tool Week." It is with great pride that I salute the machine tool industry, an exceptionally gifted and dedicated group of Americans with whom I worked closely for more than a quarter century, in peace and in war, while in industry, and that I am pleased to commend to my colleagues now in Congress.

NAACP URGED RATIFICATION OF THE GENOCIDE CONVENTION IN 1964

Mr. PROXMIRE. Mr. President, the National Association for the Advancement of Colored People, which has fought so diligently in the field of human rights for blacks in America, has long supported the Genocide Convention. In 1964, the NAACP pledged its full support to the principles embodied in the international conventions of the U.N. Meeting in Washington, they urged "all NAACP state conference, branches, youth councils and college chapters to urge their Senators to vote favorably upon the ratification of the Genocide Convention."

I hope Senators will take note of the NAACP's support for the Genocide Convention.

In this regard, I ask unanimous consent that the statement of Clarence Mitchell, director of the Washington Bureau, National Association for the Advancement of Colored People, before the Ad Hoc Subcommittee of the Committee on Foreign Relations this spring, be printed in the RECORD.

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

STATEMENT OF CLARENCE MITCHELL

At its annual convention in Washington, D.C., June 22–27, 1964, the NAACP by resolution pledged its commitment to the principles of international conventions dealing with abolition of the slave trade, abolition of forced labor, and the political rights of women and to the Genocide Convention, and it urged Senate approval of each of these conventions.

So much of the resolution as relates to the Genocide Convention reads as follows:

"The Genocide Convention seeks to achieve international agreement prohibiting the systematic annihilation of ethnic groups throughout the world.

"The Genocide Convention was originally submitted to the United States Senate in 1949. Many nations of the world have already approved these conventions and the United States is embarrassed not to have done likewise. (The NAACP has participated with and commends other national organizations which are urging prompt action by the United States Senate.)

"We urge all NAACP state conference, branches, youth councils and college chapters to urge their Senators to vote favorably upon the ratification of . . . the Genocide Convention."

Under NAACP policy this resolution remains in effect and represents the official position of the Association on this subject.

We regret that the prompt action urged by our Association has not as yet been taken by the Senate. We join those many other organizations who have asked this Subcommittee, the full Committee and the Senate to favorably consider the Genocide Convention without further delay.

DEFICIT SPENDING AND INFLATION

Mr. ALLOTT. Mr. President, quite often we find that our constituents are not only thinking along with us, but sometimes are thinking ahead of us in their analysis of the fiscal situation and the policies which Congress seems determined to pursue.

This is especially true in the field of deficit spending and its relationship to inflation.

I am deeply indebted to a prominent businessman of Denver, Mr. H. G. Frankel, for a statement upon this situation, which sets out very explicitly the dangers of our continued overspending in this country.

I commend it to all Members of Congress and hope that it will be read and also that Congress will pay more heed to it.

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

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

STATEMENT BY H. G. FRANKEL

Isn't it high time that the politicians quit kidding the American public about the true cause of inflation. There is only one basic cause of inflation and that is over-spending by the federal government—spending more each year than can be collected in taxes. There is only one way to stop inflation—balance the budget either by reducing government costs or raising taxes. High interest rates—excessive price increases—and excessive labor increases are basically not the cause but the result of inflation.

Regardless of the gross national product, the dollar must go down in value in exact proportion to the amount of government deficit financing. As a result of our overspending in the past forty years, our 1930 dollar is now down to about 35¢. How much longer will it take to whittle it down to zero?

When Franklin D. Roosevelt took us off the gold standard and put us on managed currency, he intentionally aopted the policy of spending more than our actual income with the commendable aim of restoring prosperity in the middle of a serious depression. The Keynes Theory that Roosevelt followed was to over-spend in times of depression, but conversely to create a budget surplus in times of prosperity; however, this has never materialized and with the insatiable demand for more and more billions from the Pentagon—with the unlimited growth of federal bureaucracy—and with the constant growth of more and more pressure groups who are demanding more and more subsides from the federal government, government expenditures continued to soar long after the depression. Even in the years of the greatest prosperity we have known, government spending still far exceeded income. Deficit spending has become our national policy and this spending orgy has been a politician's paradise because the way to be elected and to build up a political machine is to vote for more and more spending regardless of what taxes might be imposed to cover that spending.

In the last of Johnson's administration, we actually spent 25 billion dollars more than all of the taxes collected, which, of course, is the main reason for the dollar going down and the prices going up in 1969 and 1970.

Unfortunately, fuel has been added to the fire by the huge expenditures on the Vietnam war, which from the beginning was a bad blunder; excessive wage increases way out of proportion to actual increases in productivity which have been given to organized labor because of their dominant political position; and the inefficiency and terrible waste of the Pentagon which many of our best authorities estimate is a minimum of 10 billion dollars per year. Certainly many billions of dollars per year could be slashed off the appropriations of the Pentagon and to the armed forces without detracting in the slightest from our defenses.

Once an inflation starts, it becomes almost impossible to stop it because every inflation feeds on itself and creates more and more pressure groups demanding more and more subsidies. Controls are not the answer—controls are just a temporary expedient—controls call for more controls—they breed black markets—and ultimately must destroy our free enterprise system and our present Democratic system of government.

The politicans will never take the lead in controlling or stopping inflation simply because in order to be elected they must necessarily accede to this greater demand of pressure groups—in the past forty years time these pressure groups have controlled elections and they will continue to do so until a great mass of Americans are educated to the fact that we again have to live within our means.

In order to really stop an inflation, we have to be prepared to make personal sacrifices; unfortunately we have to be prepared for temporary increases in unemployment and temporary slowing down of the economy. It is an impossibility to stop a dope habit of forty years without some withdrawal pains.

We must demand that our congressmen and senators do not vote for any expenditures no matter how commendable unless they enact taxes to pay for these expenditures. Any congressman or senator who votes for an expenditure without providing a tax to pay for same is an inflationist and if the majority of the American public are educated to vote these inflationists out of office, then it will no longer be politically profitable for our representatives in the congress and the senate to promote reckless spending. As soon as it becomes politically unprofitable for spending programs, just that soon will we be able to balance the budget and control the inflation; but not until then.

The alternative is to ultimately confiscate

the bulk of money that the people have invested in government bonds, in saving accounts, in insurance policies and pensions which in the main are the investments of the poor; ultimately it would also destroy equity values and, far more important it would mean the end of our free enterprise system and our American Democratic Government. Free enterprise and our American idea of individual liberty and individual responsibility go hand in hand and one cannot survive the other. Before the final bust up comes, government will ultimately control and in all probability own outright our basic industries and we will have a collectivized form of government instead of a government based on individual liberty—and whether we call that government a Fascist Government or a Socialist Government or a Communist Government, the American dream which produced the greatest form of government the world has yet seen, will vanish from this earth.

THE PRERELEASE PRISON PROGRAM

Mr. HOLLINGS. Mr. President, one of the most tragic blights on the American prison system is the large volume of crime committed by the repeated offender. The Justice Department tells us that four of every five felonies committed during the last decade were perpetrated by persons previously convicted of crime.

Clearly our prison system is not doing an adequate job of rehabilitating the criminal.

William D. Leeke, director of the South Carolina Department of Correction, has authorized an invaluable article detailing the efforts South Carolina has made to rehabilitate the prisoner before he returns to society. The South Carolina prerelease program has had encouraging effects. In South Carolina only 3.1 percent of the prisoners released after undergoing prerelease training have returned to the Department of Corrections. Naturally, 40 percent of the releasees later return to prison.

The prerelease program thus helps reverse the rising tide of crime, and in the process saves the public money. Director Leekes' article deserves a wide audience.

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:

A SUCCESSFUL STRATEGY IN THE WAR AGAINST CRIME

(By William D. Leeke)

Crime is one of the most serious domestic problems confronting the American people today. It is a pervasive problem that costs the taxpayers more than $31 billion each year and threatens the property as well as the safety of everyone.

Arrest, court, and prison records furnish insistent testimony to the fact that recidivists (repeated offenders) constitute the hard core of the crime problem (President's Commission on Law Enforcement and Administration of Justice, "The Challenge of Crime in a Free Society," 1967, p. 45). Nineteen out of every 20 persons (95 percent) who are sent to prison return to society, and 40 percent of those released from confinement later return to prison (President Richard M. Nixon, November 13, 1969). The U.S. Justice Department has estimated that four of every five felonies during the last decade were committed by a person who had previously been convicted of a crime, and U.S. Attorney General John N. Mitchell has stated that: ". . . if we can achieve a substantial decrease in the rate of recidivism, we can achieve a substantial decrease in the crime rate" ("The Case for Penal Reform," Trial Magazine, Oct./Nov. 1969, pp. 14–15).

As one considers these facts, it becomes apparent that correctional institutions and their staffs must play a crucial role in the national effort to reduce the crime rate and to re-establish a respect for law and order in our society.

EFFECTIVE CORRECTION

The Nation can no longer afford the luxury of ineffective correctional systems which further isolate and alienate the offender from the society to which he must return. Crime is largely a community-based phenomenon, and the ultimate adjustment of the offender must be within the community, not within the artificial, unnatural environment of a correctional institution. It is logical, therefore, that meaningful and effective correction must provide an opportunity for the offender, under carefully controlled conditions, to demonstrate whether or not he can adjust to the community to which he plans to return upon release.

The South Carolina Department of Corrections is the State correctional system for adult offenders. The current population of the department is more than 2,600 adult offenders. Only 100 of these are females. In addition, there are approximately 2,500 adult males incarcerated in the 43 autonomous county prisons.

Several years ago, the South Carolina Department of Corrections realized that a carefully planned, well-organized, and closely supervised pre-release program was necessary if the department expected to fulfill its responsibility to the public by returning ex-offenders to the community as law-abiding, productive, taxpaying citizens. Years of frustration and failure had proven that inmates could not be prepared to successfully cope with the many problems of re-entering a free community while exposed only to carefully controlled, artificial environment completely isolated from the community. Accordingly, a pre-release center was opened in 1964; most male inmates spent their last 30 days of incarceration at this center.

Through organized pre-release classes, group discussions, individual counseling, and limited interaction with selected members of the community, concerted efforts were made to prepare the men for their return to their respective communities.

While this 30-day pre-release program did enhance the chances for successful re-entry into the community, it soon became apparent that this program was not sufficient. Men were encountering personal, social, family, and vocational problems which could neither be anticipated nor dealt with satisfactorily in a centralized, corrections-oriented program which lasted only 30 days. More extensive inmate-community interaction for a longer period of time was needed; however, enabling legislation was necessary before the pre-release program could be extended into the community.

The South Carolina Legislature responded to the request for enabling legislation by adopting Section 55–321.1 of the *South Carolina Code of Laws*. In part, this section authorized the South Carolina Board of Corrections to extend the limits of confinement of inmates into the community and to permit selected inmates to participate in paid employment or training programs in the community.

COMMUNITY-BASED CORRECTIONS

Since the enabling legislation was passed in 1966, the South Carolina Department of Corrections has successfully initiated two programs which are designed to facilitate the return of inmates to society as law-abiding, productive citizens: (1) The Work Release Program which was begun in 1966 and (2) the Accelerated Pre-Release Program which was begun in 1968. Both programs provide the individual with an opportunity to demonstrate his readiness for total release and paid employment in the community using the skills and training he has learned or improved while incarcerated. The primary distinction between the two programs is that the work release participants may spend their last 6 to 12 months in paid employment in the community while the Accelerated Pre-Release Program participants spend only their last 90 days working in the community. Both groups return to a correctional institution during nonworking hours.

A network of community-based correctional facilities called community pre-release centers is being developed in the industrial and population centers of the State to accommodate the Work Release and Accelerated Pre-Release Program participants. Each community pre-release center will have space for 50 to 60 inmates. The ultimate goal is to have a community pre-release center within a realistic commuting distance of any geographic location in the State. When this has been accomplished, an inmate can continue his pre-release employment after he has returned home upon his release. Three community pre-release centers have been opened to date and a fourth is under construction. Since the State is geographically small, only seven or eight community pre-release centers will be necessary.

OBJECTIVES OF PROGRAMS

The primary objectives of community pre-release programs in South Carolina are as follows:

1. *The Protection of Society*—The law requires that an individual who has been incarcerated as the result of a crime must be released at the end of the specified sentence whether or not he has demonstrated his readiness for release. Most States provide methods whereby the inmate can reduce his sentence substantially. In South Carolina through a combination of methods—good behavior, 7-day work credits, and credits for the donation of blood (limited to 60 days—12 days for each of five pints—during a 12-month period)—an inmate can reduce his sentence by approximately one-third. Time off the original sentence, which is commonly referred to by inmates as "good time," can be withdrawn by the director of the South Carolina Department of Corrections if there is just cause. Inmates enter the community pre-release programs on the basis of their "good time" release date; consequently, if they are unable to adjust to the partial release provided through these programs, all or a portion of their "good time" can be revoked. When this occurs, the inmate is returned to incarceration without the costly and time-consuming necessity of arrest and judicial action. To date, 585 inmates have entered the community pre-release centers; of this number 111 (18.9 percent) have been dismissed and returned to other correctional institutions for further adjustment and incarceration.

This is obviously a sound procedure by which society, to a degree can be protected from inmates who are likely to return to criminal activities.

2. *Aid to Law Enforcement*—Before the days of community pre-release centers in South Carolina, an inmate was released at the expiration of his original sentence minus any accumulated "good time." He was provided a one-way ticket home and one suit of "suitable clothing." A notification of release was mailed to the appropriate law enforcement official; however, this official did not know when the ex-inmate would arrive, where or if he would be working, or where he would reside. These circumstances no longer exist for individuals being released through community pre-release centers. The law enforcement officials know when he will arrive, where he will be staying prior to and after release, and where he will be working.

Law enforcement officers visit the com-

munity pre-release centers on both a formal and an informal basis. They teach pre-release classes and interact with pre-release participants in small groups or individually. Through their interactions, the inmates learn to respect the law as well as law enforcement officers. Also, it should be mentioned that the South Carolina Department of Corrections has employed a number of former law enforcement officers as members of staffs at community pre-release centers.

3. *Crime Prevention*—As it was pointed out earlier, recidivists comprise the hard core of the criminal population in the United States. The South Carolina Department of Corrections is making every effort to reduce recidivism for adult offenders in South Carolina and, thus, to reduce the crime rate for the State. Table I shows preliminary recidivism data for the 30-day pre-release, accelerated pre-release, and work release programs.

TABLE I.—SOUTH CAROLINA DEPARTMENT OF CORRECTIONS' RECIDIVISM DATA[1]

30-day prerelease program[2]			90-day accelerated prerelease program[3]			6-month to 1-year work release program[4]		
	Returned to SCDC			Returned to SCDC			Returned to SCDC	
Number released	Number	Percent	Number released	Number	Percent	Number released	Number	Percent
3,243	466	14.4	213	10	4.7	137	1	0.7

[1] The above rates include only persons who were released from and returned to the South Carolina Department of Corrections. The number, if any, who returned to prison at the county level or in another State is not known.
[2] Nov. 1, 1964 to Aug. 1, 1969.
[3] Jan. 1, 1968 to Aug. 1, 1969.
[4] Jan. 1, 1968 to Aug. 1, 1969.

Preliminary analysis of the effectiveness of the community pre-release programs is most encouraging. Data in Table I show an inverse relationship between the length of the transitional period between the prison environment and the free world and the rate of recidivism. The recidivism rate increased as the length of the transitional period decreased. While only one of the 137 men who participated in the work release program returned to the South Carolina Department of Corrections, 466 of the 3,243 who participated in the 30-day pre-release program returned to the South Carolina Department of Corrections.

If the above conclusion regarding the relationship between the length of the transitional period and the recidivism rate is valid, it can only be concluded that the community pre-release programs are effective in reducing recidivism.

4. *Financial Savings to Taxpayers*—The community pre-release centers have not been in operation long enough to conclusively establish their effectiveness as a means of preventing recidivism; however, there is conclusive evidence to establish the economic justification of community pre-release programs. Table II reflects the salaries earned and taxes paid by participants in these programs.

Historically, the total cost of the incarceration of offenders has been borne by the taxpayers. At the present time, the per capita inmate cost to the South Carolina taxpayers for operating the South Carolina Department of Corrections is $1,641 per year; therefore, the cost of incarcerating 60 persons in the South Carolina Department of Corrections is $98,460 per year.

SAVINGS TO TAXPAYERS

Participants in the community pre-release programs are gainfully employed in the community, and they earn the standard civilian wages. Consequently, they are each required to pay $3.50 a day to the South Carolina Department of Corrections for room, board, and transportation. One man would, therefore, pay $1,277.50 a year to the South Carolina Department of Corrections for the privilege of participating in the community pre-release program. This represents a net savings to the taxpayers of $1,277.50 (77.8 percent) for each participant in the program. In addition to saving the taxpayers almost 80 percent of their imprisonment, residents of the community pre-release centers pay taxes—local, State, and Federal—as well as contribute to the support of their families.

CONCLUSION

Community pre-release programs and other forms of graduated release are still in the experimental stages of development. Numerous studies have been conducted in other States to ascertain their effectiveness in reducing recidivism, and the results of existing studies are not very encouraging ("Graduated Release," *Information Review on Crime and Delinquency*, December 1969). The results of previous studies are not conclusive; and, of course, the effectiveness of the pre-release programs in South Carolina cannot be determined on the basis of studies in another State. Preliminary statistics in South Carolina are most encouraging in that only 3.1 percent of the 350 persons who had been released through the combined pre-release and work release programs (shown in Table I) have returned to the South Carolina Department of Corrections. The department is engaged in a continual evaluation of the pre-release programs, and the South Eastern Correctional and Criminological Research Center at Florida State University is also researching the effectiveness of the program.

A major factor in the success of the pre-release programs in South Carolina has been the extensive community involvement in the planning and operation of the pre-release centers. The future success of the South Carolina Department of Corrections in its efforts to combat crime through the community pre-release programs will be dependent upon the continued cooperation and support of local law enforcement officials, business and industrial leaders, civic, social, and religious organizations, and private citizens. The South Carolina Department of Corrections is optimistic that this support will continue and that the community pre-release programs will remain an effective front in the war against crime in South Carolina.

TABLE II.—CUMULATIVE EARNINGS, TAXES PAID, AND OTHER DISBURSEMENTS FOR COMMUNITY PRERELEASE CENTERS OPERATED BY SCDC

	Totals for month	Totals since inception
Total men in program, Feb 28, 1970	86	
Admitted	29	585
Dismissed	5	111
Released	15	295
Paroled	4	99
Total loss	24	505
Total men in program, Mar 31, 1970	91	
Fiscal report:		
Total salaries paid	$30,945.08	$1,157,686.09
Average weekly salary	90.00	
Amount disbursed to dependents	4,670.35	191,088.57
Amount disbursed to inmates	9,400.39	185,505.76
Amount on hand	20,987.04	
State and Federal income:		
Department of corrections	9,474.50	246,852.39
S.C. State tax	489.78	13,906.30
Federal income tax	3,564.98	105,261.83
Social security	1,280.88	37,995.12
Miscellaneous deductions	73.33	4,791,06

RETIREMENT OF JOHN S. FORSYTHE

Mr. PROUTY. Mr. President, on Friday the 11th of September, John S. Forsythe, the general counsel of the Labor and Public Welfare Committee retired from Federal service. A reception in his honor was attended by over 300 of Jack's friends. Secretary of Health, Education, and Welfare Elliot Richardson joined several Senators in a personal tribute to Jack. I was sorry I was unable to attend for I would like to have said to Jack: "Thank you for a job well done."

As I look back over my 11 years of service on the Labor and Public Welfare Committee. I have said "thank you for a job well done" to Jack so many times. I have probably said these words to Jack each time we passed a bill. If I did not, I should have, because with Jack every job has been a job well done.

Jack was the general counsel of the committee when I joined it on January 20, 1959, but I had been aware of Jack's excellent work when I served in the House and he was general counsel for the Committee on Education and Labor.

Time and again in my years of service in Congress, I have looked to Jack for advice and assistance. He has always responded with excellent advice and energetic assistance and something more—the wonderful ability to see all sides of a problem.

Perhaps this ability more than anything assisted our committee to provide far-reaching legislation in every area of the committee's vast jurisdiction.

I will miss the frequent meetings with Jack and his charming wife Pat. I will miss the chance to say again "thank you for a job well done."

Mr. President, today I would just like to say one more time: "Thank you, Jack, for a job well done."

MOBILIZING WORLD OPINION FOR HUMANE TREATMENT FOR AMERICAN POW'S

Mr. DODD. Mr. President, I believe it is fitting and useful that Congress is today meeting in joint session for the purpose of voicing its united indignation over the Communist treatment of American prisoners of war, and for the purpose of also discussing what practical measures are available to us that might help to bring about their early release.

Like other Senators, I have spoken about this matter several times on the floor of the Senate. Unlike some Senators, however, I have little confidence in the ability of diplomacy by itself as an instrument for obtaining the release of the American POW's.

No one likes to be a pessimist when the lives of American servicemen are involved. But in the light of the Communist record on the treatment of prisoners in World War II and the Korean war, there is no reason at all for placing any hope in an appeal to Communist humanitarianism, and there is little reason for believing that diplomacy by itself can turn the trick.

In World War II the great majority of the Germans and Italians and Japanese who were taken prisoner by the

Soviets never returned to their families. They simply disappeared.

In the Korean war, of 7,100 Americans taken prisoner, 3,354 died in captivity, while another 389 are still listed as missing.

Such are the grim facts.

I do not believe, however, that the situation is hopeless. If the Communists are unresponsive to diplomacy, they are far more responsive to massive demonstrations of international public opinion.

As I have said before, I believe that we should raise the matter of the American POW's at every single session with the Communist negotiators in Paris; that we should mobilize all of our diplomatic resources and information facilities for the purpose of arousing world opinion; and that we should not hesitate to warn of stronger measures if the Communists refuse to agree to the elementary humanitarian request that they abide by the Geneva Convention on the treatment of POW's.

I believe that we should solicit the support of every newspaperman and every editor and every elected representative and every parliament in the free world in bringing pressure to bear not only on Hanoi but on Moscow as well.

More recently the thought occurred to me that we have been remiss in failing to seek support at the United Nations for a resolution expressing the hope that all parties to the conflict in Southeast Asia will observe the rules of the Geneva Convention on the treatment of prisoners of war.

In the POW field, the Geneva Convention is the legal and moral equivalent of the U.N. declaration of human rights; it would be no exaggeration, indeed, to say that the Convention enjoys the implicit endorsement of the United Nations as a document which represents the consensus of civilized international opinion. If the majority of the member nations are not prepared to vote for a simple resolution calling on the governments involved in the Southeast Asia conflict to respect the terms of the Geneva Convention, then I say it is high time that we reappraise the utility of the United Nations.

There is another observation that I wish to make.

I have witnessed many so-called antiwar demonstrations, and my memory of these demonstrations is that all of the placards were directed against alleged inhumanity and brutality on our part and on the part of our allies. But I do not recall seeing a single placard which called on Hanoi to stop abusing American POW's, or to accept international inspection under the Geneva Convention.

To me it seems that there is something indecent, in fact almost suspect, about a humanitarianism that is so full of concern for human suffering on one side, and so indifferent, on the other side, to the monstrous and deliberate torture of American POW's.

Let me suggest to those antiwar protestors who are not pro-Vietcong and do not want to see a Communist victory, that their protests would be far more persuasive if they called upon Hanoi to withdraw from South Vietnam at the same time as they called upon us to withdraw, and if they protested against the inhuman treatment of American POW's to Hanoi at the same time as they protested against our bombardment of Vietnam.

I hope the antiwar protesters will join us in demanding humane treatment for the American POW's because their voice would carry much weight with Hanoi. But whether they join us or do not join us, every Member of Congress, every newspaperman, every editor, every concerned member of the public, every friendly parliamentarian in other countries, every friendly, yes, and even every neutral government, has a clear moral duty in the matter of the American prisoners of war.

If we join our voices in a mighty international protest and if we seek to raise the issue at every opportunity, the chances are that before too long the Communists will decide that the retention or abuse of American POW's is simply not worth the political embarrassment that the issue is causing them internationally.

CULEBRA: THE BOMBING MUST STOP

Mr. DODD. Mr. President, roughly a month ago I received from Mr. Ramon Feliciano, mayor of the town of Culebra in Puerto Rico, a letter setting forth the complaints of his people against the continued use of the island of Culebra as a target practice area for U.S. naval vessels and naval aircraft.

Over the intervening period I have had an opportunity to study the documentation which Mayor Feliciano sent me and to acquaint myself with the arguments offered by the Navy in defense of its position.

The complaint of the Culebrans is that the increasingly intensive use of their island as a target practice area imposes almost unbearable hardships on them. They say that the cattle business on the island has been virtually ruined, that the once thriving fishing industry is now in severe economic distress, that property values have gone down, that all of the inhabitants frequently have their sleep disturbed, and that the quality of education has been seriously affected by the constant overflights of naval aircraft and the around-the-clock bursts of exploding shells and bombs.

The authoritative weekly Armed Forces Journal early this year decided to look into the Culebra issue in depth. The editors reported that they spent more money, more hours, more interviews, checking out this situation than they had spent on any story they had printed in several years.

The Armed Forces Journal, as everyone knows, has never been accused of lack of sympathy for the U.S. Army, Air Force, or Navy. But on the issue of Culebra the editors of the Journal came up with this conclusion:

> Our hearts are with the United States Navy, but not about Culebra . . . Our biases, our opinions have shifted from the Navy's side to the Culebrans as we tracked down and checked out the story . . .

I must say that my own conclusion, after examing all the facts, is exactly the same as that of the Armed Forces Journal.

I know that it will cause certain inconvenience to the Navy if it has to shift from Culebra to one of the available uninhabited islands in the Caribbean area.

It may even cause serious inconvenience.

But in this situation we must accord primacy to human considerations. As the Armed Forces Journal put it:

> The Culebran problem isn't targets: it's people—patriotic, warm, gracious, honest, candid, Americans, who aren't accustomed to dealing with bureaucratic subtlety. They are not at war with the Navy. The only enemy the Culebrans have is indifference.

That the Culebran people are united on the issue is apparent from the fact that in a recent poll 304 out of 313 Culebran families voted to have the Navy leave.

The entire Puerto Rican people have rallied around the Culebrans in their battle against bureaucratic indifference. Indeed, there is no single issue in recent decades on which the Puerto Rican people, from right to left, have been more united, and no single issue about which they have felt more passionately.

The reason for their passionate feelings on the Culebra issue should be apparent to anyone who has the least human and political sensitivity.

The Puerto Rican people feel that our continued use of Culebra as a target practice area, in total disregard of the welfare and attitude of its inhabitants, is strongly suggestive of a colonialist attitude. They feel that we are not treating the Culebrans as fellow Americans with equal rights, but as colonial subjects whose welfare and convenience we are completely free to disregard if we believe it to be in our own interests.

To say that the issue has reached explosive proportions would be no exaggeration. Indeed, Puerto Ricans who are friendly to the United States have warned us that if some relief is not given to the Culebrans and if, instead, Congress should grant the Navy's request to take over more of the island, it would play into the hands of the Puerto Rican independence movement, which is now to a large degree under Castroite extremist control. The possibility, therefore, is not excluded that if the Navy persists in its blind determination to continue and even expand the use of Culebra as a target practice area, the United States may wind up losing Puerto Rico and the vital Roosevelt Roads Naval Station.

I say that the United States must not and cannot afford to treat the Puerto Rican people as though they were colonial subjects.

We must not do so on simple, moral, and human grounds.

And we cannot afford to do so because in the long run it will undermine, not strengthen, our national security, if we should ever lose the voluntary support of the Puerto Rican people for union with the United States.

And it will further undermine our national security because our standing in

the world community is a vital element in this security.

Culebra has been used as a target practice area for almost 30 years. But the issue has become a particularly heated one over the course of the past year because of the greatly intensified scale of naval target operations in the area.

In 1969, the average daily use of Culebra and the surrounding cays for target practice was 9½ hours on Monday through Saturday and 3½ hours on Sunday. The ships of at least six other nations participated in the 1969 operation. And the Navy told the Armed Forces Journal that bombardment operations would climb from about 5,000 sorties in 1969 to over 9,000 sorties this year.

It does not require much imagination to realize what effect this nonstop bombardment must have on the life of the residents. I was particularly impressed, however, by the account of a Culebran schoolteacher, Carmelo Feliciano, who had taught school on the island for 13 years. This is what he said:

Teaching in Culebra is an extremely difficult job. The continuous flow of air traffic at low altitudes over the school, helicopters, jets and propeller planes, make an infernal noise, creating a state of tension and anxiety and rendering virtually impossible to hold the attention of the students . . .

When bombs and shells are exploding the school buildings tremble with every explosion. You can see fear in the children's eyes. They sit in school in a peculiar way as if ready to run at a moment's notice. During the periods of heavy night bombing, students fall asleep in class. They look sleepless and the teachers there know why this is so. Bombing is carried out far past midnight every day and these kids are kept awake by the noise and the tremor caused by the bombs until early morning hours . . .

Due to all this noise caused by Navy aircraft and boats bombing and shelling, and also because they live in constant fear of losing their lives, the student's work at school is very poor. There has not been an honors graduate in Culebra in more than three years.

Mr. President, it has been the hope of many people that the Navy would voluntarily reconsider its position. As the Armed Forces Journal points out, there are alternatives to Culebra in the area. And relocation to an uninhabited island would, despite temporary inconvenience, ultimately permit superior training for our Navy. In using the tiny inhabited island of Culebra, the Navy must observe certain restrictions on the speed of its boats and on the range at which they operate and on their angle of attack. On an uninhabited island, they could operate without any of these restrictions.

Since the Navy has thus far given no evidence that it intends to accede voluntarily to the legitimate protests of the Culebran people, and the Puerto Rican Government, I have asked Senator GOODELL to add my name as a cosponsor of his amendment to the military construction authorization bill, to terminate the funding of this intolerable and unnecessary activity and to persuade the Navy that the time has come to make other arrangements.

Mr. President, I ask unanimous consent to have printed in the RECORD the series of seven articles on the subject of Culebra, published in recent months in the Armed Forces Journal.

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

CULEBRA: NAVY FOCUS ON CINCLANT'S BULL'S-EYE IS WAY OFF TARGET, BUT MAY BE COMING INTO RANGE

(NOTE.—What matters is the Journal sometimes gets stories that we'd rather not print. In many ways, this is one of them.

(But we don't make the news: We report it.

(Sometimes our reporting isn't as accurate, we find out, as our readers rightfully expect. (For a good example, see this week's Defense Forum.) Our research isn't always as thorough as it should be for a journal which readers expect to lay out both sides of an important issue. From time to time, we realize too late that we've really not been as fair or as objective as an independent Spokesman for the Services ought to be.

(But "Spokesman for the Services" doesn't mean "mouthpiece for the brass."

(Our hearts are with the United States Navy, but not about Culebra. Not now. Our biases, our opinions have shifted from the Navy's side to the Culebrans' as we tracked down and checked out the story on these pages. In this case, we think our facts, our research, our candor will check out better than the Navy's—at least until RAdm Norvell Ward, new Commander of the Caribbean Sea Frontier, finishes an analysis he seems quickly to have set in motion when the Culebran problem was brought personally to his attention last week.

(We have spent more money, more hours, more interviews checking out this story than any news the "new" JOURNAL has printed in 2½ years. Because we were sort of hoping there really wasn't anything of substance to report. That's why this issue went to press three days late: The substance we had hoped would evaporate, didn't. Its flavor however, showed some prospect for improvement after The JOURNAL visited Culebra last Friday and Saturday.

(This is not a news report. It's a commentary, with our opinions. It's candid, but we think it's fair. We hope the Navy—in time—can think so too.

(We chose, in many instances, not to print the names of Navymen who are quoted here, but whom we now believe to be wrong, or misinformed, or poorly advised. What bothers us is that they were the Navy "experts" on Culebra. But they were sincere and, we believe, wanted to be honest—if sometimes less than candid.

(What matters is not who said what, but what now should be done. With the Culebrans. By the Navy. For the country which both of them love.—The Editors.)

(By Ben Schemmer, Clare Lewis and the Journal Staff)

CULEBRA ISLAND, 22 May.—Like the mouse that roared, the tiny island of Culebra—owned in part by 743 Spanish-speaking, patriotic U.S. citizens who have representation but no vote in Congress—has appealed to the Governor of Puerto Rico and the House Armed Services Committee to help it win a battle with the United States Navy it has tried hard to avoid.

The Navy wants to expand gunnery and bombing operations on this docile, 7,000-acre Caribbean municipality used as CINCLANT's bull's-eye. Culebrans have accepted their odd destiny with quiet humility for over 35 years, in some respects for almost 70. Now, they want the Navy to shoot at something else.

The Navy says that it has no choice: that it needs more targets and larger safety zones on Culebra for new air-to-ground missiles like Walleye, Standard ARM, Bulldog, and Hobo glide bombs. But some of the very experts who stress this now admit they haven't even read the studies telling what's wrong with a host of other, uninhabited nearby island alternatives.

You probably read about Culebra in Life on 10 April. But Life cut into the onion no deeper than the peel, and facts available to The Journal suggest that the Navy—even though it sliced a lot longer—hasn't gone much deeper. Hopefully, the Governor of Puerto Rico and the House Armed Services Committee will cut through to the middle.

Hearings on the Culebran issue will be held this week before a HASC Real Estate Subcommittee headed by Representative Charles Bennett (D-Fla.). Since 1954 the Navy has wanted to buy the entire island, on which it already owns at least 2,683 acres. But on 31 December, Culebrans wrote to President Nixon objecting to Navy plans—never explained to them—to resettle Culebra's 450 families on the nearby island of Vieques, which in part is another Navy bombardment range.

The quiet islanders began making noise when bombardment operations peaked, early this year—led by the Navy, but with ships of at least six (and some say over 20) other nations peppering away, too.

Since, the mouse that roared has lost a major court battle, won a partial but ironic victory from the Navy (see page 39), and today could be calibrated on a political/social bull's-eye which the Navy apparently doesn't see.

After stabbing at the onion for the last ten days, our impressions of the "Culebra problem" could fill a book. The Navy would not like it. Nor does The Journal. Here, in brief, is why:

INNUENDOS

We've heard more innuendos from the Navy than facts from either side. Navy spokesmen suggested, in The Journal's preliminary inquiries, that the Culebra problem stemmed—to a large degree—from "confusion stimulated by greedy guys." What apparently were innuendos about Culebran land-owners and other U.S. citizens hoping to develop small parcels of land or exercise development options jeopardized by the Navy's Culebran plan just didn't check out.

In the case, for example, of a St. Louis Washington University professor who has a limited option on property near the harbor of Dewey, but who has been outspoken on behalf of the Culebrans—and whose interests were subtly questioned by the Navy—The Journal has a sworn affidavit that he would give up his option, *at cost*, "to the end that goals of the people of Culebra may be realized."

Suspicions that expenses incurred by Culebra's Mayor Ramon Feliciano, traveling on his islanders' behalf, were paid by land promoters just aren't true.

Slurs against a retired Methodist minister on Culebra who added his voice to the mouse's roar aren't worth the paper they're printed on—except to put the *Navy's* problem in perspective.

A group of so-called "squatters" turned out to be Culebrans who have built houses on land the Navy moved them to, but for which they can't get deeds.

SINCERITY ON BOTH SIDES

The Navy is sincere, but readers who talk with the Culebrans would probably find them even more so. The Culebran problem isn't targets: it's people—patriotic, warm, gracious, honest, candid Americans who aren't accustomed to dealing with bureaucratic subtleties. They are not at war with the Navy. The only enemy the Culebrans have is indifference. But when you're sitting on the bull's-eye, it doesn't matter whether it's friend or foe who pulls the trigger.

The Culebrans earn their living from the land, and from the sea. They have only lim-

ited access to both, and the Navy proposes to make the limits even tighter. There is no school on the island; there is, as yet, no hospital. For both, the Culebrans must go to the Puerto Rican mainland. Denial of that access becomes a major infringement on their very lives.

What the Culebrans have asked for—and for 35 years didn't get, until about two weeks ago—was a "dialogue" with the Navy.

ILL-ADVISED EXPERTS

Some Navy Culebran "experts" are, in large part, ill-advised, misinformed, or blind. Asked, "How do the Culebrans really feel?" an OpNav action officer, referred to The Journal by a higher authority, said bluntly: "The Culebrans want the Navy to stay." Asked about a very recent poll in which 304 out of 313 Culebran families voted to have the Navy *leave*, this officer said he had not heard of any such vote, but got his dope from a Culebran who "really had his pulse on the people." When The Journal later got the source's name, he turned out to be custodian of the Navy's Culebran range. Culebrans said they love this man, but that he is 70-some years old, and perhaps not attuned to his people today.

Navy spokesmen—guys on the front line on the Culebran issue—had few details on and little perception of alleged serious safety problems and near tragedies that vitally concern these U.S. citizens just miles away from CINCLANT's bull's-eye—even though most have at least been mentioned by the press. Notwithstanding Navy disclaimers on civilian accidents, it is reasonably clear that at least four serious injuries have resulted from Navy/Marine Corps operations on and near Culebra since the island first "joined" the Navy in 1901.

In 1914, Isaac Espinosa lost his right arm from a grenade or detonator he picked up on Culebra's shore. In 1935, Aberto Peña Garcia, a 15-year-od schoolboy, was killed when he playfully banged a USMC grenade with a hammer. That same year, in a different accident, Vincento Romero lost his right arm.

These accidents don't quite track with carefully structured Navy statements that "no one has been killed or injured as a result of this training." Because the Navy statement technically refers to ships' gunfire practice since 1936, after Marine Corps maneuvers were moved to Vieques. But no one The Journal was referred to had ever heard of young Sixto Colon, who lost his right eye in 1964 playing catch with an explosive toy which Culebrans say the Navy left on the island. And the Navy spokesmen didn't mention the nine *Navymen* killed in April 1946 when an aircraft dropped its ordnance on an observation post painted the same color as the target.

Navy spokesmen mention near accidents, such as the time the battleship *New Jersey*, late in the '40s or early in the '50s, lobbed shells on a cistern between the town of Dewey and the impact area. Or when the *Missouri*, about the same time, scored on the safety zone instead of the impact area. Or when "destroyers fired over the island." But no one The Journal has been referred to by the Navy seemed remotely aware of even more recent incidents in which:

The San Juan yacht *La Vagabunda* had smokepots dropped athwartships during five passes by an aircraft on a clear day while the vessel cruised amidst a flotilla of 14 others.

A bomb "or something" landed in Dewey Harbor just months ago, 400 yards from the house of Culebra's only doctor.

"1,000-lb bombs" landed intact in six to 10 feet of water just off Culebra's eastern shore.

(Each of these allegations was verified by The Journal through recorded eyewitness reports and/or on-the-ground surveys.)

ALTERNATIVES

There may not be any alternative to expanded operations on and near Culebra. CINCLANT *does* need targets, especially for new missiles with bigger "footprints." What bothers us is that the "experts" who rejected the alternatives apparently haven't read the studies about them—that's what two of the experts conceded.

The Journal doesn't want to second-guess the Navy, but Puerto Rican Governor Luis Ferre told us on 22 May that "There is so much area nearby that has *not* been exhaustively studied." He mentioned such possibilities as:

Vieques—The Navy and Marine Corps already use the island's eastern 2¾ miles for naval gunfire support/aerial close support targets, the next three miles inland for a Marine landing/maneuver area, and Vicques' western end for an "inert" naval ammunition depot. *Question:* Why not move the "ammunition depot" to Culebra, the Marine maneuver area to the western end of Vieques, and the new targets and expanded safety zones for Walleye, etc., to the freed area on Vieques' eastern coast? CINCLANT's "expert" conceded he had "never thought about it." Yet SecNav's office repeatedly deferred to this very officer on questions on the alternatives so "exhaustively studied." A CINCLANT spokesman later explained, however, that "it's really not [this officer's] job to answer these kind of questions," and referred The Journal back to Navy headquarters in Washington. Governor Ferre told The Journal Friday that the Culebra/Vieques switch could have substantial merit and that he'd probably discuss it with his "good friend Mel Laird."

Isla Palominos—At the very closest, by nautical charts The Journal looked at on the scene, this 165-foot-high island is at least 2¾ miles east of Puerto Rico, 1¾ miles from the nearest (and uninhabited) island—and it's close (10 nm) to CINCLANT's gunnery operations center at Roosevelt Roads.

Caya Lobos—A 40-foot-high island 2½ miles from the northeastern tip of Puerto Rico, which boasts of a luxurious hotel. The hotel has been empty for the past four to five years. (If the Navy needs more varied terrain than this "flat" island provides, barges of dirt could change it, we think, and dirt costs less than the rental on Culebra—even under the Navy's 30 April $70,000-a-year easement.)

We don't question Navy statements that, from a strictly military viewpoint, Culebra is "the most suitable" target complex. What's at issue is whether or not other, more "suitable" from a political/social viewpoint, still could be militarily "acceptable."

WHAT IT BOILS DOWN TO

Navy spokesmen have been less than candid. What sounded like "substantial investments" turns out to be acquisition costs of $501 for Culebran land Culebrans can't use. Injuries, incidents, and accidents alleged apparently haven't been checked out.

The irony of the "Culebra problem" merits thought. A Supreme Court ruling of 1958—won by the *American Communist Party*—held that the right to travel "across frontiers in either direction and *inside the frontiers as well*" is a right guaranteed by the fifth amendment (emphasis added). It is incongruous that Culebrans don't benefit from this ruling, while the American Communist Party does.

Culebra's new "custodian," Admiral Ward, is the Navy's former (and first) Safety Director—another irony, but perhaps a hopeful sign as well. An attorney writing Culebra's appeal to the Supreme Court is a Director of the San Juan Navy League.

And the final irony may prove to be this: The whole Culebra problem hinges on the five-mile safety zone needed for Walleye and other new guided missiles. But Walleye apparently isn't funded for production next year. And all the follow-on missiles (Condor, etc.), a Navy expert let slip, have safety-zone footprints so much larger that they "could not be tested at all on the Culebrita targets" about which the Navy has been so adamant.

The Navy may have legal as well as political and social problems with Congress over the Culebra issue. For one thing, the statute under which the new leasehold is being requested apparently requires the Navy to specify payment costs. The 30 April request says only that the new easement "exceeds $50,000." Second, a key CINCLANTFLT official told Washington attorneys representing the Culebrans—on a no-fee, "pro bono publico" (for the public good) basis—that Culebra is a "range." He said the area is not a "training camp." But Title 10 USC 2663(a)(1), from which the Navy request derives, provides condemnation power *only* for fortifications, coastal defenses, or military training camps. A fine point, perhaps—but it could be a crucial one for the Culebrans. And for the Navy as well.

As Governor Ferre told The JOURNAL, "This is an issue *everyone* can still win," given time for the dialogue Culebrans have sought—given time for a really good whack at the onion. But if *anyone* loses, no one wins. And the Culbebrans lose if the Navy wins too soon. Congress should give the Culebrans time for the Navy to catch up on its reading.

Culebran bombardment debate enters a critical phase on 1 June when House Armed Services Real Estate Subcommittee, headed by Representative Charles Bennett (D-Fla.), holds hearing on Navy 30 April acquisition request for new 2,200-acre, nonhabitation, $70,000-per-year easement to expand its Culebran target complex. Unless Congress turns down the request, Navy could begin condemnation proceedings on 2 June. Puerto Rican Senate voted 15 May—with only one dissenting vote—to oppose the Navy's plan. Culebran citizens and Puerto Rican legislators have asked for time to oppose the Navy plan: Congressman Bennett told The Journal, "I'm not going to turn down anybody who wants to appear on this issue." Hearnigs were to be in closed session, but HASC counsel James F. Shumate told Journal they now may be held in open.

Governor Luis Ferre told The Journal on Culebra 22 May, while discussing other possible target areas, "There is so much area that has not been exhaustively studied." Governor Ferre suggested at least four other nearby islands that might be used. One of them, Box of the Dead, is only six nautical miles southeast of his home town.

Joseph A. Grimes, Jr., Special Civilian Assistant to Navy Secretary John Chafee, told Journal the Navy has an "overwhelming operational problem—it needs targets." When asked "Why on Culebra?" instead of on other land the Navy already owns or leases, Grimes referred Journal to Cinclantfit, to whom he defers on operational or technical questions. But the expert to whom Grimes referred The Journal told an attorney for the Culebrans just three days later he could not cite detailed objections of alternative target sites because he has never read the Navy studies rejecting them.

"No one has been killed or injured as a result of this training," RAdm Alfred R. Matter, former Commander Caribbean Sea Frontier, told a press conference in Puerto Rico on 24 April, referred (specifically) to Navy use of Culebra "since 1936 for ships' gunfire practice." (In sentences before and after this quote. Admiral Matter referred also to aerial bombing of nearby cays and rocks—see map.) Virtually identical statements were made by SecNav Special Assistant Joseph Grimes at press conference in San Juan on 3 April, and by VAdm R. L.

Shifley, DCNO (Logistics), in 9 March letter to Representative James W. Symington (D-Mo.)—Admiral Shifley said there was no "civilian" casualties. But Navy officials told The Journal there have been both deaths and injuries, while insisting there has been "no intent to mislead" and that the blanket denials cited above represent "an honest mistake." In 1946 nine military men were killed when an aircraft dropped its ordnance on a Navy observation post—it had been painted the same color as the target, in another incident a Culebran schoolboy was killed playing with a Marine Corps grenade he found in the impact area. Still another Culebran is reported to have lost his left arm as the result of a similar accident.

"Box of the Dead"—An Alternative to Culebra?

One alternative to an expanded bombing range on Culebra which CINCLANTFLT may not have explored was mentioned to The Journal by Governor Luis Ferre and to others last week by Headquarters Caribbean Sea Frontier. It's an uninhabited island just two miles off Puerto Rico's south central coast.

It's called Isla Caja de Muertos. Translated, that means Box of the Dead. Or, literally, Coffin.

The View From the Admiral's Bridge

A fast fuse now burning close to the powder may have a dim chance of turning instead into a candle of hope, if the Navy's former Safety Director and new Commander Caribbean Sea Frontier, RAdm Norvell G. Ward, serves as an accurate "switchboard" to Washington. We hope he'll tell the Navy that what's really at stake on Culebra is people, not targets. Navy people, as well as Culebrans.

At an early breakfast in San Juan on 23 May, Admiral Ward told the Journal that:

The Navy had no record, so far as he knew, of many of the recent civilian casualties and near-miss incidents alleged (and, in The Journal's opinion, too casually dismissed by the Department of the Navy). Admiral Ward said, "Since becoming aware of the large number of alleged incidents wherein people of Culebra may have become endangered, I have asked the Missile Range Facility to report to me on all incidents they have recorded of misfires or wild shots on the bombing and gunfire support ranges."

He had not asked his staff to take a look at other possible target choices, but one senior officer there had indicated that there were other islands in the vicinity of Puerto Rico that might be alternatives. He told The Journal, "We have not studied them and do not have the necessary capability or expertise to make a meaningful study. It is the Fleet Commander who is knowledgeable of all the requirements both operationally and logistically and the needs for instrumentation. . . . I could conduct the study if provided the technical expertise, but would anticipate that CINCLANTFLT would call upon those with the expertise to make any additional study, as I assume they did in the prior studies. . . ."

He had "been in conversations both with Mr. Grimes [on Friday morning, 22 May] and with CINCLANTFLT headquarters and apprised them of the latest developments," suggesting that when they appear before the House Armed Services Subcommittee, "they should have all of the substantive facts at their fingertips, and be prepared to answer many probing [and, in The Journal's opinion, embarrassing] questions. Otherwise, the results might not be as desired."

He would check out alleged near misses involving commercial and general aviation aircraft—for his personal information.

He felt that "Mayor Feliciano is very sincere in his efforts to prevent the Navy from acquiring the land deemed necessary for safety purposes if we are to continue using the range."

Allegations of "deals" between the Navy and the Commonwealth of Puerto Rico for reacquisition of land benefiting the mainlanders, at the expense of the Culebrans, could be put in a more constructive light. "The Navy does have a plan for land reverting to the Commonwealth of Puerto Rico as it is no longer required, in accordance with agreements made when it was turned over to the Navy after the Army withdrew from the island of Puerto Rico. The Navy has excessive parcels in the past two or three years which have reverted to the Commonwealth. Specifically, yes, the Navy has plans for changing the boundaries of its land on Vieques."

Asked how his command referred to the Culebran "problem," "issue," or whatever, Admiral Ward said: "People around here call it 'the Culebra problem,' I assess it as a very serious issue, the outcome of which is uncertain, and one which, if resolved by Congress in the Navy's favor, will result in an intensification of the efforts by Mayor Feliciano to marshall public opinion behind his cause. I see it as a continuing and very difficult problem for us." How serious, in our view, depends on the kind of "switchboard" Admiral Ward turns out to be.

Call to "Big Mary"—Anything To Avoid Arrest

If you want to go swimming off Culebra, call "Big Mary" first. Big Mary is the Navy observation post on the island's northwest peninsula. Call on 122.8mc. if you want to dive into the water from an airplane, or fly over or land on the island.

It's illegal—a federal offense—if you don't, and the fine literally could be "$5,000 and/or imprisonment for a term not to exceed five years."

Luckily, The Journal found this out and got permission from Big Mary before going snorkeling with Culebran citizens to verify reports (which Navy first doubted) that "1,000-lb bombs" or big shells lie 10 or so feet down on the harbor bottom, near the island's best beaches—next to the Navy "safety zone," as well as in impact areas where Culebran fishermen drop anchor, with Big Mary's permission.

The ordnance was indeed there, big and ominous. Maybe a 1,000-lb bomb, maybe not—but too big to carry back to the Navy.

By virtue of the 1941 Executive Order creating "Culebra Island Defensive Area" and the "Culebra Island Naval Air Space Reservation," the 10-mile-long island is totally enveloped by an artificial legal barrier comprising its entire territorial waters three miles from the island's high-water mark, as well as the "air space over" it. Entry into these zones without prior okay from the military is prohibited.

The Journal asked RAdm Norvell G. Ward if it literally would be illegal to go bomb-snorkeling off Culebra without the prior okay of Big Mary. Admiral Ward affirmed the technical effect of the 1941 Executive Order. Asked for his permission to snorkel for bombs, Admiral Ward explained the Navy chain of command and asked The Journal to call Big Mary.

"Las Bombas—Vamonos!" ("The Bombs—Let's Get Out of Here!")

Culebra, San Juan. 24 May.—The resident Navy seaman in charge of firing operations on Culebra admitted in writing today that he and three other Navymen fired six mortar rounds into a bay on Flamingo Beach where "bathers were . . . earlier"—but that "when we fired the mortar rounds, we did not look at the beach." By his description, "Three rounds were fired long and three were fired short." The shells landed within 200 yards of seven children and at least one adult, interviewed and photographed on the spot today by The Journal.

The Navyman also admitted that, at the time of the near tragedy, "The red flag was not raised" (over their observation post, which has a commanding view of the beach). The flag is a standard range signal to warn those in the area that firing operations are about to begin or are underway.

Two of the children and a 30-year-old Culebran woman signed a separate statement that:

They had checked firing schedules posted throughout the town of Dewey before going swimming; "No firing was scheduled." (The Journal has the schedules: No firing was scheduled.)

Before swimming, and moments after seeing the rounds land, they had checked for the red flag on the OP above the beach; "We looked for a red flag—but saw only the United States flag."

Just one hour earlier, Journal publisher Ben Schemmer—flying into Culebra for a meeting there with Governor Luis Ferre—listened to the Navy OP, call sign "Big Mary," advise his aircraft that "We have no operations today." Schemmer had requested permission to Photograph Navy targets on Culebrita Island. Big Mary inquired, "Request why you want to take pictures of Culebrita." Told that Schemmer was an editor, Big Mary responded, "HMMMMmmm," "Wait," and then advised, "Request you remain clear of area near Twin Rocks." Targets on Twin Rocks, a federal bird sanctuary, are at least seven miles east of the beach toward which the mortar rounds were aimed.

RAdm N. G. Ward told The Journal in San Juan late today: "The incident reached my attention today and it is under active investigation to understand why it happened. There is no denial the incident occurred. The info I have is not clear and garbled."

The senior man on the island in charge of "Big Mary"—a Navy petty officer first class—said in his written statement, "I asked [the Navy range officer at Roosevelt Roads] if we could make these [mortar] firings. . . . He said go ahead." The same officer had been asked on Friday or Saturday, by Washington attorneys representing the Culebrans without fee, about the then-alleged mortar firings on Flamingo Beach last Friday, and reportedly said: "No, it's impossible, it never happened. Every mortar round was under lock and key. There were no operations scheduled and none were carried out."

The Journal was told by several Culebrans that the Navy Seaman in charge of the Friday firings said at a town meeting on 14 March (the day before the Culebrans delivered their "ultimatum" for the Navy to leave their island): "Culebra could demonstrate as much as it wants, but with one shot the Navy could blow everybody off the island."

Culebra's Fight for Life

Presidential Executive orders signed in 1901 and 1902, and reaffirmed on 26 June 1903, reserved all public lands on Culebra and adjacent cays for use of the U.S. Government, under Navy jurisdiction. Air space over the island and water three miles around it were restricted to exclusive use of the military by Presidential Executive Order 8684, signed 14 February 1941.

One effect of these Executive Orders is that private planes and ships must arrange for special Navy permission to approach or leave the island—one of 76 municipalities of the Commonwealth of Puerto Rico. *Life* magazine wrote on 10 April: "To all intents and purposes, the 700 [*sic*] islanders are prisoners on their own land."

On 5 December of last year, RAdm Alfred R. Matter, then Commander Caribbean Sea Frontier, wrote a Puerto Rican land devel-

oper—who wanted to build vacation condominiums on 225 acres on Culebra's eastern tip—an unfortunate letter which described vividly what the Executive Orders mean to U.S. citizens on the island:

"Culebra Island is a keystone in the Atlantic Fleet weapons range, which encompasses Naval Station, Roosevelt Roads, nearby Vieques Island, and thousands of square miles of ocean area. This large complex is expanding and operations are becoming increasingly intensive, frequently being conducted through seven days of the week. As such use increases, inhabitants of nearby areas such as your property will be subjected to the noise of supersonic booms, gunfire, rocket fire, and heavy air traffic."

Culebrans since have lost two legal battles to replace the "supersonic booms, gunfire, rocket fire, and heavy air traffic" with the more tranquil environment for which their neighbors on the U.S. Virgin Islands just 10 miles to the east are envied. On 11 March, the U.S. Court of Appeals in Boston upheld an earlier District Court decision and reaffirmed the Navy's legal right to bombard, strafe, and mine Culebra and its nearby cays and rocks.

Two days later, on 13 March, Culebrans voted in a town meeting to ask the Navy to withdraw from their island. What turned these docile custodians of CINCLANT's bullseye into the mouse that roared, one citizen told The Journal, was the "new generation." "We have been peaceful and tolerant, but our lives have been in danger. I am the father of two sons and a daughter. Airplanes loaded with bombs pass over. It's as simple as that."

In past years, three Puerto Rican governors have resisted DoD overtures to buy the island outright, citing a provision of the Commonwealth's Constitution that no municipality could be dissolved without approval by its own people in a referendum. On 26 March, the Puerto Rican Senate passed a unanimous resolution asking President Nixon to "re-examine the Navy's activities in Culebra for the purpose of assuring the residents . . . peace, order, free movement, and development of economic interests." Since, the Culebran issue has been widely publicized. Feature articles have appeared in the *Miami Herald* (2 April), the *San Juan Star* (4 April, 17 May), *Life* (10 April), and the *New York Times* (15 April).

President Nixon on 14 April directed staff assistant Hugh W. Sloan, jr, to write Mayor Feliciano, informing him that the Defense Department "is reviewing restrictions imposed."

On 24 April, Culebrans won a partial victory, but a questionable destiny. RAdm Alfred R. Matter announced an alternative Navy plan at a press conference in San Juan. (The Navy never consulted with Mayor Feliciano or the citizens of Culebra in developing the plan, nor were they invited to the press conference at which it was announced.)

Instead of outright purchase of the entire island, the plan would return to the Culebrans 10 miles of beach and coastline, along with 680 acres of land near the town of Dewey (named for the naval hero) for use as homesites, recreational areas, and a medical dispensary. (Earlier, the Navy had refused to turn over two acres of unused land so that Culebrans could build a hospital for which the people—only half of whom have jobs—had already raised the money.)

But the Navy still proposed to lease, and later to buy by right of eminent domain, a new parcel of 2,350 acres covering the eastern one-third of Culebra. Since the western third of the island is an impact area and safety zone for naval ship-to-shore gunnery training, Culebran families centered in the town of Dewey felt they would be "strangled." Shells would still explode 2½ miles to their west, and bombing/missile runs would intensify 3½ miles to their east. The Navy told the Journal that the bombardment operations would climb from about 5,000 sorties in FY 69 to over 9,000 sorties this year.

Governor Luis Ferre—who reportedly hadn't set foot on Culebra since 1943—greeted the revised Navy plan with enthusiasm. He said it would pave the way for the turnover to his Commonwealth of other Navy-owned land in Puerto Rico, at Ft Buchanan and Isla Grande. (He did not say, but The Journal learned, that other Navy lands on the north central coast of Vieques might also be freed.) Governor Ferre said that the Navy's new Culebran plan would "substantially improve the living conditions of residents on this island" and that it revealed a "new attitude" on the Navy's part which would probably lead to better relations in the future between the Navy and residents of Culebra.

But on 15 May, the Puerto Rican Senate voted, with only one dissenting vote, to back the Culebran islanders in opposition to the Navy plan. (In the Puerto Rican Senate, Governor Ferre's party is in the minority.) On 21 May, the Senate's minority leader indicated that he would go to Washington to testify on behalf of the Culebrans. Although Governor Ferre has been careful not to take a strong public position, it is now clear that bipartisan support is coming together throughout the Commonwealth of Puerto Rico for the Culebrans. Governor Ferre made it clear to The JOURNAL on 22 May that he would give serious study to other alternatives and would get the Navy to work with him so that peace and calm could return to Culebra.

At JOURNAL presstime, however, the Navy proposal still stood. It was submitted to Congress 30 April as a routine, 1¾-page FY 70 real estate acquisition request. But the House Armed Services Committee will give the islanders a chance to make their feelings known early next week.

Their feelings are clear. Earlier this month, 304 families of 313 polled voted to back Mayor Feliciano's request that the Navy leave Culebra. Unless the House Armed Services Committee specifically disapproves the Navy request, they could still lose: condemnation proceedings could begin the day after the mouse makes its roar heard in Congress.

CULEBRA—ACT II: HOUSE PANEL RESCHEDULES HEARINGS—NAVY STILL ADAMANT ON NEED FOR TARGETS

(By Ben Schemmer and Bruce Cossaboom)

The Navy apparently intends to turn a deaf ear to the mouse that roared—the tiny Puerto Rican island of Culebra.

Navy officials this week told Puerto Rico's Resident Commissioner in Washington, Jorge Cordova, they have no intention of abandoning their missile target range activities on the island, despite recent shore-shelling incidents and misfires on the island.

Cordova, who sits as a non-voting member of the House Armed Services Committee, met this week with Assistant Secretary of the Navy (I&L) Frank Sanders and SecNav Civilian Special Assistant (on Culebra) Joseph A. Grimes, jr.

Cordova told Sanders of his conviction (and that of the island's political leaders) that the Navy should cease use of Culebra as a target area—much less expand it, as the Navy now proposes in an action pending before the House Armed Services Real Estate Subcommittee.

Cordova told The Journal he was informed the Navy "could not accede" to this request.

The Navy is now investigating the firing incidents (Journal, 23/26 May) and told Cordova that, after studying its findings, it would try to insure that there would be no repetition of the near misses.

Cordova had suggested to the Navy that it extend its investigation beyond the shelling incidents to the whole question of the use of the island. He said the Navy should find other uses for its property on the island, and consider abandoning it altogether as a target area.

The Navy says it needs Culebra as a target range and that the "incidents don't change the picture," Cordova told The Journal.

Meanwhile, a Real Estate Subcommittee hearing on the Navy's proposal to expand bombardment activities on the island—originally scheduled for 1 June but postponed after a public furor broke over the island—has been rescheduled for 10 June.

Two days after a 23/26 May Journal Commentary suggested that "Congress should give the Culebrans time for the Navy to catch up on its reading," Representative Charles E. Bennett (D-Fla) announced on 28 May that his panel would postpone hearings on the Navy's 30 April request to lease—and later to buy—a new, 2,350-acre safety zone on the 7,000-acre island for Walleye and other guided-missiles.

Bennett's original postponement action apparently stemmed in part from news that mortar rounds fired without warning on 22 May toward a beach on which Culebran children were swimming—on a day when no firing operations were scheduled—caused the yacht on which Governor Luis Ferre was leaving the island to change course after its pilot heard the rounds.

Ironically, Ferre's visit to Culebra was his first there since 1962—and he had just been briefed by the Navy on ship-to-shore bombardment and aerial bombing exercises on and near the island. The incident happened within an hour or so after The Journal interviewed the governor on Culebra.

Ferre got his briefing from the Navy at the very observation post from which the mortar rounds were later fired. A Navy officer at Roosevelt Roads called them "marking rounds" without much explosive.

Bennett said, "Before conducting hearings on any new plans for the island, I want to first get a report from the Navy Inspector General, who has been asked to look into this most recent incident. I then plan to ask my Subcommittee to conduct its own investigation."

The Subcommittee staff declined to state whether Congressman Bennett or the Navy initiated action to postpone the hearings.

Governor Ferre told The Journal in Washington earlier this week that he does not expect to testify personally at the hearings. But he said, "Every measure must be taken to protect the lives and tranquillity of the Culebrans" and that he supports Jorge Cordova's efforts. He said the Navy may be re-examining an alternative target area, the island of Desecheo, about 20 n.m. from Ramey AFB on Puerto Rico's northwest corner.

(The Journal was in error last week when we said that Governor Ferre had suggested, when interviewed on Culebra 22 May, another possible alternative, an island called "Box of the Dead," only six miles from his home town. That alternative was mentioned by a Navy official in the area. Governor Ferre did cite the other island target alternatives mentioned in the 23/26 May issue.)

Ferre has been cautious in recent weeks, commending the Navy for its revised 24 April proposal to return to the Culebrans about 680 acres of land in and around the harbor of Dewey, but not endorsing Navy plans for a new 3,250-acre easement on the island's eastern tip.

Bi-partisan support on behalf of the Culebrans, who now want the Navy to quit

shooting at their island altogether, has been mounting.

Cordova announced on 28 May in San Juan that he would testify against Navy plans to continue, much less expand, range activities on the island. Heretofore, he has been relatively noncommittal on the issue.

Also in Puerto Rico, the Commonwealth's Senate minority leader, number two man in Governor Ferre's own party, on 26 May made public his position that the Navy should stop using Culebra as a target. The next day, the Senate's majority leader announced that he, too, opposed the Navy's continued use of the island.

DOT, WHITE HOUSE INTEREST?

The Journal also learned that at least three senior members of the White House staff have begun looking into the Culebran issue. So, apparently, has Senator Edward Brooke (R-Mass). Brooke's interest reportedly stems from a conversation he had with Transportation Secretary (and former Massachusetts governor) John Volpe, shortly after Volpe read page proofs of The Journal's 23/26 May Culebra Commentary while he was flying back to the U.S. on 25 May from a brief weekend respite on St. Thomas, 10 miles east of Culebra.

Governor Volpe told The Journal that he was unaware of but would look into allegations of near misses between commercial and general aviation aircraft flying into Culebra and St. Thomas and Navy aircraft engaged in bombing and gunnery operations on the range near Culebra.

Senator Sam Ervin's Subcommittee on Constitutional Rights may also look into the Culebran problem. (Ervin is also a member of the Senate Armed Services Committee.) Previous Supreme Court rulings indicate that restrictions imposed on the islanders' free access to and from their island may violate their rights under the Fifth Amendment. The restrictions stem from a 1941 Executive Order (#8684) which prohibits anyone from entering or leaving the island, or the airspace above it, without explicit prior Navy permission. One such Supreme Court ruling cited similar restrictions imposed on U.S. Japanese citizens impounded on the west coast during WWII and said: "We allowed the government in time of war to exclude citizens from their homes and restrict their freedom of movement only on a showing of the greatest imminent danger to the public safety—[But] the nation was then at war. No such condition presently exists."

A related report (Number 940) filed by the Committee on Naval Affairs, 2nd Session, 64th Congress, said that powers which Congress gave to the President under 18 U.S.C. 96—the authority cited for the 1941 Executive Order on Culebra—to establish defensive sea areas for purposes of national defense "is valid only in times of actual or threatened war."

The President has exercised the expropriation powers under 18 U.S.C. 96 on some 26 different occasions, designating defensive sea areas in Chesapeake Bay (Executive Order #2898), in the Los Angeles-Long Beach Harbor area (#8970), and in New York Harbor (#8978). But all of these designations have since been expressly revoked. Currently, there are only about 10 such defensive sea areas still in effect: besides Culebra, the areas affected include Pearl Harbor, Guam, Honolulu, and Whittier, Alaska.

Some of the Constitutional issues in question include:

Whether the unusual restrictions imposed on the Culebrans—who are U.S. citizens with representation but no vote in Congress—represent a curtailment of their liberty of movement to such an extent as to be prohibited under the Fifth Amendment;

Whether enforcement of the 1941 Executive Order represents a taking of property without prior compensation and without the due process of law also spelled out in the Fifth Amendment; and

Whether Congress specifically intended under 18 U.S.C. 96 for the President to create *permanent* defensive sea frontiers which would remain in force even when a state of actual or threatened war no longer existed.

Culebrans have said they decided to as the Navy to withdraw entirely from the island after bombardment operations were intensified earlier this year. But CINCLANTFLT spokesmen told the Journal that there has been negligible, if any, change in the pattern or intensity of operations over 1969. On Friday, 22 May, a blackboard in the Navy's observation post on Culebra showed that to date this year, 17,680 target runs had been carried out, compared with a total of 37,500 in all of 1969. The same blackboard showed that in 1969 rockets were fired on 228 days, strafing was conducted 114 days, air-to-ground missiles were fired on 13 days, aerial mines were emplaced on 42 days, and naval gunfire practice was conducted on 123 days. The Navy states that it needs additional land on Culebra because operations will intensify in the future.

When asked by The Journal why they remained quiet for so long about Navy bombardment operations on their island, several Culebrans stated that their previous mayors just "weren't interested" in the issue.

Cordova, in Washington before his meeting with Navy officials, told The Journal that the Navy's investigation came about as a result of the incidents, his request and those of others, and the Journal Commentary.

Cordova called The Journal publicly "more helpful" than anything else he could cite.

Three-year-old Sandy Orta, daughter of Culebra's only doctor, was swimming on Flamingo Beach Friday, 22 May, when the resident Navy seaman in charge of firing operations on the island fired six mortar rounds into the bay. The seaman, a Navy petty officer first class, admitted in writing Sunday, 24 May, that "bathers were seen on the beach earlier, but when we fired the rounds, we did not look at the beach," and that the "red [warning] flag was not raised" over the observation post from which the rounds were fired. Mrs. Carmen Orta holds Sandy here just outside their home on a hill overlooking Dewey Harbor. In late February or early March, Dr. Orta (and other Culebrans) saw a bomb or shell splash into the water just 400 yards from this spot. Navy spokesmen in the Pentagon, at Cinclantflt, and on Puerto Rico told The Journal prior to an on-the-spot visit to Culebra that they knew of no such incident. But a Culebran citizen took movies of a Navy team when they later removed the bomb from the harbor—led by the same petty officer who supervised the near-tragic mortar firings on 22 May. (The Journal now has the movie film.)

Mayor Ramon Feliciano is serving his third term as the municipality's first elected mayor. (Previous incumbents, all retired Navy personnel, had been appointed.) In the background are homes which Culebrans told The Journal they had built on land the Navy told them to move to some years back, but for which many say they have been unable to get deeds. A Navy officer in Washington, one of the "experts" on Culebra, told The Journal earlier that such Culebrans were "squatting" on Navy property. Feliciano was born on Culebra in 1923, served in Army 1943–1946 at Roosevelt Roads, was transferred to Navy boat detachment in which he became "skipper of a boat." Asked his rank while in the Service, he told The Journal, "Maybe a sergeant; I don't know." His father wrote him while he was in the Army that he had been given 24 hours to move from island's northwest peninsula because the area was needed for an expanded safety zone. Of Feliciano's eight brothers, five have served on active duty. Feliciano last won re-election in November 1968. His principal opponent: Carlos Garcia Sanes, who finished four-year Coast Guard tour the preceding April, ran on same ticket as Puerto Rico's Governor Luis Ferre.

John Dinga adjusts underwater camera in hopes of photographing bombs he had seen in 6 to 10 feet of water off Culebra's "safety zone" beaches and nearby rocks designated as federal wildlife bird sanctuaries. Large swells and rough seas (see background) prevented Dinga from getting his pictures, but he guided The Journal to one of the bombs on a snorkeling expedition—cleared in advance with the Navy—the day after Navy demolition teams (as a senior Navy officer admitted later) were sent to destroy the bombs. Dinga, who earns his living on Culebra by catching and exporting rare tropical fish, which abound in Culebran waters, discovered the bomb he showed The Journal while diving to free a stuck anchor just three weeks ago. Dinga says he has seen "perhaps ten others" like it in waters just off Culebra's beaches.

Hector Giral, one of the four general aviation pilots with whom The Journal flew to and from Culebra, flies for North Cay Airlines out of San Juan. Giral told The Journal that about five weeks ago, after being cleared into Culebra by "Big Mary," four Navy jets bombing near Luis Pena Cay came within 500 to 1,000 feet on either side of his aircraft while pulling out of their dive runs—to the east instead of to the west. Giral said he advised Big Mary of the near miss, was told to continue his approach into Culebra. Giral said that Big Mary "apologized" and suspended bombing operations for the day. Navy officials said they had no record of such recent near misses. But the other three pilots with whom The Journal flew cited numerous similar recent incidents. Several months ago one North Cay pilot reportedly resigned on the first day he flew into Culebra, claiming in his resignation that he'd come too close to being run down by Navy aircraft operating in Culebra's approach corridor.

San Juan Attorney Jose A. "Ben" Suro is representing Culebrans without fee on a "pro bono publico" basis and is paying all out-of-pocket expenses to test constitutionality of 1901–1941 Executive Orders which created artificial legal barrier enveloping the 10-to-11-mile-long island. Suro owns no land on Culebra, has no options for land on it—he just likes to anchor his yacht and relax there on weekends. Suro decided to represent Culebrans after previous Commander Caribbean Sea Frontier, RAdm Alfred R. Matter, twice refused to meet with Culebra's Mayor Ramon Feliciano (and later with Suro personally) or to discuss Culebran issue with the press—until he announced on 24 April (without advising Culebrans or inviting them to his press conference) that Navy would no longer try to take over entire island, but instead would seek to lease and later to buy new 2,350-acre easement on Culebra's eastern tip for safety zone for firing Walleye and other new guided-missiles against nearby island of Culebrita. Matter's successor, RAdm N. G. Ward—said to be first Navy admiral ever to set foot on Culebra—visited there 21 May, two weeks after assuming command in San Juan.

Transportation Secretary John Volpe has had his staff check into alleged reports of near misses between commercial aircraft flying into St. Thomas, U.S. Virgin Islands—10 miles east of Culebra—and Navy aircraft operating in the "Culebra Island Naval Airspace Reservation," created in 1941 by Executive Order. The only such recent near miss on FAA records happened 19 April of this year, involved a 727 descending into St. Thomas. Its crew reported that a Navy F-4 went into afterburner while passing within 100 feet. Navy, however, told FAA that the

727 (which was at 6,000 ft on control approach and under FAA radar control) was 15 miles "off course" and that carrier *Saratoga* sent the F-4 up to "intercept" the "unidentified" aircraft. A retired Navy captain who commanded the Atlantic Fleet Range Support Facility at Roosevelt Roads until mid-October 1969 told The Journal: "Yes, we had a lot of near misses, a lot more than we reported, but every time we had a verifiable report, we wrote the FAA and invariably they would chew the [civilian] pilot out." He said he knew of no case where a near miss occurred when civilian aircraft had not "deviated from approved air routes." He also said that about one year ago two Navy pilots "ran into each other near St. Thomas" after exercises near Culebra and that roughly 18 months ago a Navy aircraft dove into its target on a rock near Luis Pena Cay, killing the pilot. Previously CINCLANTFLT spokesmen had denied any such recent fatal accidents.

CULEBRA, INTERMISSION: THE TARGET SHOOTS BACK: CULEBRANS TESTIFY AT HASC REAL ESTATE SUBCOMMITTEE HEARINGS

(By Clare Lewis and Bruce Cossaboom)

Hearings on the Navy's plans for Culebra were scheduled to begin on Wednesday, 10 June—just as this issue went to press.

In a statement prepared for presentation before the House Armed Services Committee's Real Estate Subcommittee, attorney Richard D. Copaken, counsel for the Municipality of Culebra, said his focus would be twofold:

"1. Is there an acceptable alternative for the Navy training mission now carried out on the Island of Culebra and its neighboring cays?

2. To whom is the Navy proposal a matter of grave concern? . . ."

In describing his early conversations with Joseph A. Grimes, jr, Special Civilian Assistant to SecNav John Chafee, Copaken says: I learned that the Navy assumed that only land speculators were dissatisfied with the present level and proposed level of Navy training operations on Culebra and its neighboring cays. Mr. Grimes conceded that his assumption that the vast majority of Culebrans were content with the Navy's present operations and proposal was based on questionable sources of information that are second-hand at best. I explained to Mr. Grimes that Covington & Burling [Copaken's law firm] had an identity of interest with the Navy in ascertaining whether the Navy assumptions were accurate because if they were, Covington & Burling would be obliged to withdraw."

Copaken says, in his statement, that he urged Grimes to check out the situation for himself—to go to Culebra and talk with the islanders, adding that "Mr. Grimes refused to undertake this inquiry."

In an effort to determine the true sentiments of the majority of Culebrans, Copaken says, his firm sent Thomas C. Jones, Jr., another attorney, to the island.

Jones, in his statement, details the thoroughness with which he attempted to objectly his survey, beginning with his announcement to the crowd gathered at the airport upon his arrival that he "wanted to interview anyone interested in expressing his opinion about the general subject of the relationship between the United States Navy and the Island of Culebra."

In response to his invitation, Jones says, "A large crowd gathered outside the Town Hall and people lined up patiently to be interviewed."

Not satisfied with this approach, and fearing that he might be seeing "only the vocal persons," he extended his interviews to stopping persons at random on the street and interviewing them "in the nearest shady place," and began going house-to-house.

SEARCH FOR OBJECTIVITY

Jones' surveying practices seem to present a model of objectivity: "I attempted in every manner I could conceive of to guarantee that the results of the survey would reflect an accurate and impartial impression of the attitudes of the people of Culebra. Indeed, because the results that I was obtaining showed virtually unanimous opposition to the Navy proposal, I searched out four of the Navy's five, six, or seven employees (the number of Navy employees seems to vary between five and seven and even Admiral Ward was unable to give us the precise number) in order to see whether there was some hidden reservoir of support of the Navy that I had been unable to uncover myself. However, even the Navy employees admitted to me that there was virtually no one in Culebra who supported or would benefit from the Navy plan. Thus, I am personally convinced that if there is any error in the results of my survey it is an error which would tend to exaggerate the support for the Navy proposal rather than the opposition to it."

As a check on his findings, Jones says, he announced the results of his survey to an open town meeting of "approximately 150 Culebrans,' explaining how the results had been obtained, and inviting comment and/or criticism. "Not a single complaint was voiced," he adds.

The lopsided results are, in Jones' words, "clear and unequivocal statistics." Of the Culebrans he interviewed, 95% opposed the Navy plan, and approximately 75% wanted the Navy to leave the island altogether.

"Thus," he concluded, "Mr. Grimes' assertion was completely erroneous, as is any decision which relies on such an assumption."

Having established the Culebrans' attitudes toward the Navy, Jones' statement goes on to detail the effect on the islanders of the Navy's attitudes toward the Culebrans.

"The sketch of the life of a Culebran shows a people who have been abused by the Navy is a particularly devastating and to me unexplainable sense," Jones says. "I refer to the fact that the Navy's warning system with regard to its bombardment and shelling schedules has been absolutely unreliable. Every single fisherman with whom I spoke on this subject said that he had had to flee or turn back as a result of unannounced weapons activity. This inexcusable neglect has clearly added greatly to the anxiety and outright fear which is so apparent."

Culebra's Mayor Ramon Feliciano has come to Washington to testify at the hearings, as the next step in his efforts to improve the quality of life for the Culebrans. According to a statement prepared in conjunction with his testimony before the Subcommittee, "The constant shelling and the occurrence of accidents which the Navy has denied instilled fear and desperation in the citizens to the extent of fearing for their lives and demanding that the Navy abandon Culebra and leave the Culebrans to live in peace."

WHITE HOUSE DISINTEREST?

Mayor Feliciano has been working toward that end for some time, now. His private letter campaign to enlist Executive Branch support—if not direct intervention—on behalf of Culebra did not meet with much success, although he apparently escalated it from SecNav to the White House itself.

On 19 February, Frank P. Sanders, Assistant SecNav (I&L), replied to Feliciano "on behalf of President Nixon" that the position of the U.S. Government is that Executive Order No. 8684 "must remain in force" and that the pending court action made it "inappropriate to comment further at this time."

"Thank you for expressing your feelings on this subject to the President," Sanders told Feliciano.

Apparently Feliciano had the feeling he hadn't gotten through. On 26 March, the White House received both a telegram and a letter.

On 14 April, another letter to Feliciano "on behalf of the President" arrived but this time from Hugh W. Sloan, jr, Staff Assistant to the President.

Sloan reiterated the Navy position, essentially, and advised Feliciano that DoD "is reviewing the restrictions imposed by the naval operations to ensure that the civilian inhabitants are allowed a maximum freedom of movement, consistent with safety."

Sloan expressed regret that a personal appointment with the President requested by the Mayor could not be granted, but added "thank you for corresponding with the President."

BIRDLIFE THREATENED?

As the Culebrans' protests reached the U.S. mainland, the Department of Interior apparently began to wonder what effect all this Navy activity was having on its sanctuaries in the area.

Concerned by possible damage to nesting birds at national wildlife refuges on Culebra Island (but mainly on the adjacent small cays) the Department of Interior (Bureau of Sport Fisheries and Wildlife) sent the Chief of its Division of Wildlife Refuges, Robert Scott, and other staff members to Culebra last month to make an on-the-spot reconnaissance of Culebra Island and adjacent cays to determine means for providing greater protection for migratory birds.

Scott told The Journal that his trip produced no "specifics" about injuries or deaths that may have been suffered by birdlife on the island as a result of naval bombardments.

A Navy official indicated, however, that these small islands—never before considered to be prime targets—now face an uncertain future on this score.

They have had an uncertain past as well, according to Culebrans: In May 1968 the Navy launched a massive coordinated air strike against Twin Rocks, one of the bird refuges. "It sounded as if the world were coming to an end," said one of the Culebrans. Thousands of nesting marine birds were killed, said islanders who visited the refuge the next day.

Scott said no one had told him of this incident.

Scott explained that, as a result of his trip and Interior Department concern over the refuges—a concern not previously evidenced, apparently engendered by the current publicity—Interior and Navy have set about working out a "memo of agreement," a joint understanding for modifying and improving present wildlife management practices there.

Scott said nothing had been formalized on this, but it would probably involve having the Navy avoid using the refuges as targets during certain crucial nesting periods or targeting parts of the refuge which Interior had determined to be free of the nests.

Scott cites as a precedent for establishing peaceful Navy Interior coexistence between bull's eyes and nest eggs on the same island a joint management agreement that now prevails on "No Man's Island" off the coast of Massachusetts.

This agreement maintains the goals of both agencies, Scott said, and he sees nothing "mutually exclusive" about having birds and bombs on the same islands.

Scott explained that in 1909 Theodore Roosevelt dedicated the cays off Culebra and other small outlying islands as national wild life refuges "superimposed on a prior right" of Naval use.

The only concern on Culebra itself, Scott

told The Journal, is for a colony of nesting sooty terns in the northwest area.

Scott said the refuges themselves are located on the offshore islands, but that the "exact status of the ownership of the offshore islands is not clear to us."

Scott said the Department's realty people have been instructed to answer the question: "Who owns what?"

Scott said some of the islands are known not to be public property at all, but leased. North Cay, for example, one of the larger offshore islands, was reportedly leased by the Navy from a single individual owner.

There are no wildlife refuges on it, the Navy said, "just someone running some goats."

LAND VALUES VERSUS HUMAN VALUES

Attorney Thomas Jones apparently has no doubt that at least a portion of the problem is land value. But his investigations have led him to conclude that it is not the "speculators" the Navy points its finger at who are the culprits, but rather the Navy itself. As he says in his statement:

"There is no mystery in the strong opposition of the people of Culebra to the Navy plan. The plan is widely believed to be the penultimate step in the Navy's desire to obtain the entire island; a high-ranking Puerto Rican government official told us that the Navy has wanted to resettle the Culebrans at least since 1960.

"This date corresponds to the time when the Navy began slowly to intensify its military training maneuvers. This intensification reached the point where last year—1969—the Culebra target system was in use day and night for an average of 9½ hours per day from Monday through Saturday and 3½ hours on Sunday. An even greater intensification is planned for this year. The effect of this intensification, naturally enough, has been to decrease the value of the land which the Navy will have to pay for if it acquires additional land. . . .

"Thus, the sketch of a Culebran is the portrait of a man who feels that his present way of life is imminently threatened, a man who feels forced by his sense of self-preservation to cry out."

THE STAGE IS SET

The stage is set for the third—but possibly not the final—act in the Culebra story.

Senator Edward M. Brooke (R-Mass)—who has expressed concern over the Navy's proposal for Culebra—told The Journal that Senate Armed Services Committee Chairman John C. Stennis (D-Miss) has agreed to place a 30-day "hold" on any further Navy plan.

"There is a possibility that hearings may also be held in the Senate at a later date," Brooke told The Journal. The law requires a report to both committees on any proposed real estate action. How thoroughly the background of a given transaction should be explored is at the discretion of each committee. Sources close to SASC told The Journal there are no present plans to hold a Culebra hearing.

MORE HILL CONCERN?

Aside from the Armed Services Committee itself, at least one other member of the House has become involved in the Culebra matter: Representatives James Symington (D-Mo) received questions on Culebra from one of his constituents, a Mr. Daniel Kohl, relative to property interests there, but also expressing concern, Symington's office told The Journal, about "a small group of people being exploited."

Feeling that "some important issues are involved," Symington requested—and received—information (based on plans as of 11 May) on the Navy's plans for use of the Atlantic Fleet Weapons Range (see map).

Important issues *are* involved, and important questions being asked. Once again, Congress is faced with a matter of priorities—and it's up to the Navy to explain why its priorities should come first. All the Culebrans want is their own island back.

IS CULEBRA STEVENSON'S "TREASURE ISLAND"?

"The Navy should have learned its lesson with Bikini," observed RAdm Colby G. Rucker of The Journal in an exclusive interview.

Admiral Rucker, who retired in 1949, should know: He observed Culebran affairs at first hand throughout his 30-year naval career, beginning with a landing there as a midshipman. And when he was in the Pentagon as planner for all overseas bases just after WWII, he handled both Culebran land claims (even then a problem) and the transfer of the Bikini islanders from their Pacific atoll to clear the way for the 1946 atomic bomb tests.

Admiral Rucker's reference in linking the lesson of Bikini with Culebra was to the dissatisfaction of the Bikini islanders with any other islands but home—Bikini. "Every island we moved them to was objectively better than Bikini," said Rucker. "They had more coconut palms, more pigs, better fishing reefs, more taro patches . . . but they still weren't home to them and they were unhappy."

The Navy, when it proposed to move the Culebrans to another island, was preparing to make the same mistake, concluded Admiral Rucker.

Admiral Rucker, who spent many years of his career in the Caribbean (and who taught history and English at the Naval Academy), is steeped in the history, literature, and lore of that area.

He was amused that the Journal (23/26 May) had suggested that one alternative target for Navy use instead of Culebra might be Isla Caja de Muertos—Box of the Dead, or Coffin Island. This can also be translated as "Dead Men's Chest," Rucker pointed out. He said this is the very island referred to in the old pirate song: "Fifteen men on dead men's chest, yo-ho-ho and a bottle of rum!" The pirates evidently had marooned 15 captives on Isla Caja de Muertos.

But of greater literary interest is Admiral Rucker's well documented thesis that Culebra is Robert Louis Stevenson's "Treasure Island." The topography, the hydrography, and sailing directions for entering the harbor all jibe perfectly, says Rucker.

When asked how he had connected Stevenson with Culebra, Rucker said the literary detective work wasn't too difficult. To earn a living between books, Stevenson had worked for the *Coastal Pilot*, a publication of the Royal Navy's Hydrographer. Stevenson had never been to Culebra, but he consulted *Coastal Pilot* for details to add realism to the seafaring portion of his books. "You could sail into many a Pacific harbor just by following the directions in the right Stevenson book," added Rucker.

Admiral Rucker stressed his conviction that the Navy hasn't always been as heavy-handed and unfeeling in its dealings with the Culebrans as more recent events appear to indicate. In fact, as he describes them, earlier Navy dealings with the Culebrans could have been taken as a model for the positive aspects of what has come to be known as "Civic Action" and "winning the hearts and minds" of the people.

Bluejackets from the fleet dug the first canal across the narrow neck of the peninsula which shelters the towns of Dewey. This saved a five-mile trip for ships' boats and also for Culebran craft sailing to the fishing grounds or to mainland Puerto Rico.

Well water on Culebra is brackish (Culebrans save rainwater for drinking), and the resulting forage is a high, tough wiregrass. The Navy introduced a special breed of brahma cattle capable of subsisting on brackish water and wiregrass.

Mail from ships anchored off Culebra for gunnery practice was routed through the Dewey post office. The increase in volume was so great that Dewey qualified as a first class post office—which meant a larger salary for the postmaster and additional employment for Culebrans.

Doctors and corpsmen from the ships in the area went ashore to hold sick call for Culebrans and more serious cases were brought back to the ships for treatment.

Shortly after WWII the dynamic lady mayor of Dewey had a dispensary built—but, as it turned out, it was on Navy land. Rucker, in Washington, obtained an easement which enabled the dispensary to remain where it was. —BROOKE NIHART.

CULEBRA, ACT III: NAVY ASKED TO ZERO IN ON FACTS—COMMITTEE MAY GO SEE FOR ITSELF

(By Bruce Cossaboom and Ben Schemmer)

A missile of goodwill from the Congress will impact on the embattled island of Culebra in the very near future.

Representative Charles E. Bennett (D-Fla), Chairman of the House Armed Services Real Estate Subcommittee, which is considering the Navy's proposal to acquire more target safety zone land on the Puerto Rican island of Culebra, told The Journal he and possibly other members of the Subcommittee would make a personal visit to the island either this past weekend (at Journal presstime) or this coming weekend.

Bennett said he had been invited by the Culebrans to make the trip and that he was accommodating this request and going "simply to see things on the spot"—to measure the psychological impact of the Navy's proposal on the islanders.

The announcement came about a week after a protracted and often difficult but illuminating hearing on the Navy's twin proposals—to acquire 2,350 acres of land for target practice expansion and to dispose of 680 acres on the southern coastline near Dewey.

A parade of nearly a score of Culebran and Puerto Rican witnesses urged the Subcommittee—sometimes emotionally, sometimes with logic, at times with deference, occasionally antagonistically—to reject the Navy's proposal. The islanders now want the Navy to leave altogether.

The Navy literally stuck by its guns, arguing that Culebra is an indispensable link in the Vieques/Culebra/Roosevelt Roads target complex of the Atlantic Fleet Weapons Range, and that its studies have demonstrated conclusively that nothing comparable is available in the Atlantic Ocean. "Why should we leave?" a high Navy official asked The Journal.

The Culebrans, meanwhile, have filed with the Supreme Court of petition for a writ of certiorari, asking the nation's highest tribunal to invalidate the Executive Order which they claim has virtually strangled their economy at a time when there is no war, actual or threatened.

At the hearing, the possibility of White House involvement in the final decision was raised by Chairman Bennett. The Journal has learned that senior aides at the White House have already taken a keen interest in the controversy, although it has not been formally presented to them (except in letters from Culebrans).

Meanwhile, at Journal presstime, Navy Secretary John Chafee's office confirmed that no request by the Culebrans for a personal meeting with the Secretary has been received by the SecNav's office, although Secretary Chafee is reported to be following the case closely.

Washington attorneys for the municipality of Culebra have been critical of the fact that there has been no face-to-face confrontation between Secretary Chafee and the Culebrans.

A decision to call upon the Commander-in-Chief to be the ultimate arbiter of Culebra's dispute with the Navy—a dispute perhaps now regarded as too hot a political potato for Congress to decide alone—would not be inappropriate.

THAT FUNNY VALENTINE

After all, the problem for the Culebrans began in the White House when the late President Franklin D. Roosevelt, on 14 February 1941, signed Executive Order No. 8684—establishing the Culebra Island Naval Defense Sea Area and Culebra Island Naval Air Space Reservation—shutting off air and sea passage into or out of the island except with Navy permission.

It is true that, at the start of the hearings, the Navy announced it was, for the first time, establishing an unrestricted-access sea corridor off the southern tip of the island. But that was seen by some as "nickel and dime relief," especially since many Culebrans regularly violated the requirement to obtain Navy permission by coming and going at will.

The Culebrans want no more interim relief. They want the order rolled back, and/or the Navy to cease use of the island for firing.

"I personally believe this is of such magnitude," Bennett said at the hearing, "that . . . the White House itself ought to be involved in it to a degree. And therefore, I think at the moment that at least an offer to the White House to become involved in this decision is a wise course for the Committee to take.

"We will submit the evidence to whoever will look at it in the White House," Bennett said, "and discuss it with the highest level of our government and try to see if they can resolve it in some manner."

Bennett said also that a Subcommittee review of the Navy's study of possible alternatives to Culebra should occur "before any final decision . . . to see if the White House wants to be involved in it."

The Journal has learned, meanwhile, that certain parties in the White House have already involved themselves in the Culebran problem and that an earlier disposition in some quarters to let the Navy resolve the matter itself has given way to a more involved stance.

WHITE HOUSE OFFER A FEINT?

Sources close to the Culebran protesters, however, tell The Journal they feel Bennett's offer is no more than a procedural feint to allow the Navy to ride out this storm.

They feel the White House position will be simply to let it rest with the Navy and not deal with it "until a crisis arises" (such as a fatal firing incident on the island), or until it becomes politically embarrassing for the President to continue ignoring it.

There are already the incipient beginnings of a partisan tinge to the Culebran issue, with the interest being taken in the affair by Senator Edward M. Kennedy (D-Mass) and other Senators on the Hill. (There is presumably no partisan angle to the already expressed concern of Republican Senator Edward Brooke, also of Massachusetts.)

Kennedy has recently requested SecNav John Chafee himself to investigate and report on alternative uninhabited sites which would serve Naval training purposes and would permit the return of the entire island to the Commonwealth of Puerto Rico.

Whatever some may allege is the reason for the White House suggestion, a sincere commitment to his duties lies behind Bennett's trip to Culebra. At the hearing, one of the witnesses had expressed the hope that the Chairman would "go there when they are not shooting."

Bennett said he appreciated the invitation, but added, "I am not a traveling Congressman"—a remark he tempered by saying, "If it seems helpful to go there, I would go there."

Despite the witness' warning about not going while shooting is in progress, Bennett told The Journal that he and his colleagues hope to view a demonstration of target shooting while there, and to spend time in Dewey talking with inhabitants and officials.

In a related vein, when Culebra's Mayor Ramon Feliciano told the Subcommittee he and his friends were happy to be in Washington to answer questions, a newsman quipped it was because it was "safer" than their homeland.

THE COURSES OPEN

What courses of action are open to the White House, should it decide to become involved?

It could endorse the Navy's plans wholeheartedly and urge congressional approval. It could advise the Navy to withdraw its acquisition request and intensify its efforts to find possible site alternates.

And although it seems unlikely at the moment, a stronger course of action could be followed.

If he felt such a course were indicated, the President has the authority to modify the Executive Order even further than the Navy has already done, or revoke it altogether, or issue a new one to take care of the Culebran situation.

But the Culebrans are looking to all three branches of the federal government for help and have gone to the Supreme Court, raising some of these constitutional points:

Whether the unusual restrictions imposed on the Culebrans represent a curtailment (not similarly imposed on known Communists, for example) of their liberty of movement to such an extent as to be prohibited under the Fifth Amendment.

Whether enforcement of the 1941 Executive Order (and whether it should still be considered constitutional—another point at issue) represents a taking of property without prior compensation and without the due process of law, also spelled out in the Fifth Amendment.

The U.S. First Circuit Court of Appeals has already rebuffed the Culebrans in a decision handed down 11 March. But they have now asked the Supreme Court to take the case on a writ of certiorari. No word had come at Journal presstime on Supreme Court acceptance or rejection.

WARTIME MEASURES IN PEACETIME?

The Culebrans' attorneys have told the Supreme Court that the "issues raised by the existence and enforcement of defensive sea area orders against civilians in time of peace are of continuing importance and should be decided by this Court."

"The power to create defensive sea areas both in war time and peace time is constitutional," the Appeals panel has ruled, "and the enforcement of Executive Order 8684 does not constitute either a taking of property without compensation or constitute an unconstitutional restriction of personal liberty. . . .

"In fact," the Court maintained at another point in its decision—indicating perhaps how strongly held its views were—"as long as Puerto Rico remains a part of the U.S., it would probably be unconstitutional for Congress to allow Puerto Rico any say whatever over maritime regulations involving national defense."

Title 18 of the U.S. Code, Section 96, gave the President statutory authority to establish defensive sea areas in both wartime and peacetime, and the President has not abused his discretion in continuing in effect Executive Order No. 8684.

The Court said the government selected the "least drastic means of achieving the congressional objective of safeguarding the national security of the U.S. In any event, this Court cannot and will not, under these circumstances, substitute its judgment for that of the Executive Branch in a matter of this nature."

Legal sources close to the Culebrans concede that it is a "long shot" that the Supreme Court will even agree to review the complaints, much less substitute its judgment for that of the lower court.

They say that if the Executive Order were to be invalidated (or the statute in question be deemed unconstitutional), this would certainly prove a "fatal blow to Navy operations" on Culebra, for it would permit fishing all around the perimeter.

THE JOURNAL ASKED

On May 29, the Journal submitted to the Navy a list of questions concerning Culebra. The answers, received 12 June, are reproduced in full below (answers in italics):

1. We understand that Commander, Caribbean Sea Frontier last week asked the Atlantic Fleet Weapons Range facility for a complete report of alleged recent misfires, wild shots, and off-target firing incidents on the Culebra/Culebrita island bombardment and aerial gunnery ranges. Please provide a detailed summary of these reports, by date, location, type and cause of incident, and findings with respect to civilian or military injuries or casualties.

The report on the alleged "misfires, wild shots", etc., is not complete and not compiled. When it is, we will let you know.

2. We understand that late in 1968, a Navy pilot crashed his aircraft and was killed on a target just off Luis Pena Cay. Please provide the date and details of this accident.

An A-4C Aircraft which had conducted practice dive bombing and rocket attacks on targets west of Culebra crashed during its landing approach to NAVSTA Roosevelt Roads. The plane went into the sea four miles from the end of the runway. Cause of the crash was undetermined. This happened 6 May 1969.

3. We understand that two Navy pilots collided and both died on or near the island of St. Thomas in 1967 or 1968 enroute to or from operations in the Culebra area. Please provide the date and details of this accident, if it occurred.

Two A4C Aircraft conducting daylight bomb and rocket practice off Culebrita collided on 8 November 1968 south of Culebra and crashed into the sea. Both pilots ejected. One received minor injuries and the other was not hurt. Both were picked up by helos. Both planes hit the water well away from the shore.

4. On Saturday, 23 May, a Navy demolition team searched for and blew up ordnance found near the beaches of Culebra. Please provide details of this activity: where was the ordnance found (please mark attached map with an "X"), how many rounds of what type were found, and who, by name (Culebran or Navy person), guided the team to the sites at which the ordnance was found?

About 23 May a Navy EOD team exploded ordnance in the impact area on the Northwest Peninsula. The largest piece exploded was a 100 lb. bomb just off the shore of the impact area. This was done on a sanitation sweep.

5. Does the Navy consider the Culebran beach at Flamingo Bay to be within the "impact area" or within the "safety zone" on the island's northwest peninsula? If the beach at Flamingo Bay is not within the impact area, why did Roosevelt Roads (as alleged in a written statement of EN1 Dennis Hooper) grant permission on Friday, 22 May, for Navy personnel at the Culebran observation post to fire mortar rounds toward the beach? If these rounds were not fired at or toward an authorized target within the impact area, please name and locate with a circled "X" on the enclosed map the approximate aim point.

Part of the beach at Flamingo Bay is in the impact area and part of it is not. The mortar rounds fired on 22 May were not fired toward the beach. They were fired 10 degrees to the right (or to seaward) of the tip of NW peninsula. The angle measured from the O.P. The rounds landed about 1500 yards from Flamingo beach and three other rounds landed about 2,300 yards from Flamingo beach.

6. Is the width of the safety "footprint" of Condor, Standard ARM, Hobo (glide bomb), and of any other new missiles which had been planned to be fired on the Culebran target range larger than the safety footprint of Walleye? If so, can you specify approximately how much larger?

Based on development tests the footprint for the Standard ARM is larger and of a different shape than that of Walleye. The shape and size of the footprint are classified. The footprints for the other weapons mentioned are yet undetermined.

WHY NOT LATER? IF AT ALL

Pincers movement of encroaching footprints?—The Navy's proposed expansion nearly doubles the size of the existing safety zone on the eastern end of Culebra to accommodate the firing of the Walleye missile on Culebrita. If such a sizeable chunk of the island is needed to expand the safety zone for this missile, other more sophisticated missiles which the Navy says it might (but doesn't have any current plans to) fire against Culerbita would presumably require "footprints" so large that further habitation of the island would be ruled out. The JOURNAL suggests that if the larger area is going to be needed for these follow-on missiles, why not secure it elsewhere, now, and then also use it for Walleye? Or why acquire so much more land now, if only the existing safety zone area will be needed for presently planned firings?

THE NAVY SPEAKS: FRANK SANDERS
ASST SECNAV (I&L)

Reproduced below, in its entirety, is the text of Mr. Sanders' statement prepared for presentation before the House Armed Services Real Estate Subcommittee hearings 10–11 June:

The Navy has submitted a proposal to the Congress to adjust its land holdings on Culebra. I would like to make a short statement now to put that proposal in proper perspective.

The first thing I would like to stress is the importance of Culebra to the Navy. Culebra is an essential part of the Atlantic Fleet Weapons Range, which provides important fleet training to the ships and aircraft of the U.S. Atlantic Fleet. The type of training done at the range cannot be conducted elsewhere in the Atlantic. There have been several studies to determine if there were alternatives to this range, and therefore to Culebra. The answer in each case was no. This judgment was based on the following criteria for such a weapons training area:

1. An area within which simultaneous operations can be conducted such as, amphibious operations, ship-to-shore gunfire, air operations and deep-water fleet training.

2. An area relatively free of commercial and non-participating aircraft and ships.

3. An area within a region of optimum weather conditions.

4. An area with favorable geography, oceanography, topography, and low population density.

5. An area that is preferably on U.S. territory.

6. An area contiguous to a Navy support activity.

Despite speculation to the contrary, there is no other place in the Atlantic area which meets these unique requirements where this training could be effectively conducted.

As you know, the Navy wanted to acquire the whole island in order to be able to train in an environment of greatest safety with most of the weapons now in the fleet and most of those we anticipate will be added to the inventory in the future. However, obtaining the whole island has proved to be infeasible. Therefore, we have proposed an adjustment of our land holdings on Culebra with two objectives in mind:

1. Permit the Navy to carry out its most essential training requirements—again in an environment of maximum safety.

2. Permit the people of Culebra to develop their economy as much as possible, consistent with the safe operation of the range.

Let me dwell for a moment on safety, because that concerns the second point I want to make.

Since 1936, Navy ships and aircraft have trained on and near Culebra. Nine Navymen were killed and one injured in 1946 when an aircraft mistakenly dropped bombs on a Navy observation post. Prior to 1936, when Culebra was used for Marine training, there was a boy reportedly killed accidentally when he allegedly played with a grenade left during the training. The Navy does not conduct aerial bombing on Culebra now. Marine operations are not conducted on Culebra now. Recently, there also have been reports of some Culebrans being injured prior to 1936 and one allegedly injured since 1936—but the Navy has neither knowledge of nor have any official claims been received regarding these alleged injuries.

Therefore, since 1936, we can frankly state that the record of naval training with regard to the safety of civilians on Culebra is excellent. The safety procedures in force are designed to make the range as safe as humanly possible. Further, these safety precautions are constantly under review to insure that they meet current conditions.

This level of safety cannot be guaranteed without some impact on the movement of people in and around the island of Culebra, but I can assure you the Navy will work diligently to reduce controls as much as possible consistent with safety. For instance, at some expense to training, we have shifted the Practice Aerial Mining Range from, immediately to the south of the town of Dewey to the vicinity of the small uninhabited island of Culebrita. This provides freer sea access.

It also provides a more direct ferry route to Culebra. Further, I would like to announce that the Navy has this week established a free access sealane to Dewey and the harbor through which boats may pass without checking with the Navy, which was a requirement until this week. Additional relaxation of controls consistent with safety may be possible and the Navy will welcome suggestions from the people of Culebra.

The third point I would like to make is that the Navy proposal does facilitate some new development on Culebra. We want to release 680 acres of Navy land, including ten miles of coast line near Dewey where most Culebrans live and where the best protected harbor is located. This land also includes the airport, from which regularly scheduled flights and other civilian aircraft operate.

The fourth point I want to stress is that the Navy is by necessity opposed to any economic or tourist development that will significantly increase the risk to civilians. We cannot emphasize this safety aspect too strongly. For this reason the Navy is opposed to projects for new vacation homes and marinas on the eastern end of Culebra. Some of the proposed homes and marinas would be about a mile from existing targets that have been in use for many years. That kind of development—far removed from the town of Dewey and dangerously close to existing and proposed targets on Culebrita—would seriously degrade safety.

This Navy proposal includes compensating the landowners in this area by leasing nonhabitation easements on this land to establish safety zones, while at the same time, allowing the citizens of Culebra continued use of this land for farming and grazing. We want to do this not because we are opposed to development, but because we wish to conduct critically necessary training operations with safety for all concerned.

Thank you Mr. Chairman for the opportunity to make this opening statement. We will later present more detailed justification for the Navy's need for these easements on Culebra.

CULEBRA: ACT III, SCENE—NO ISLAND ALTERNATIVE? HONOLULU FIRM OFFER TO BID ON BUILDING ONE

(By Bruce Cossaboom)

The Culebran Cauldron cooled down to a simmer this week, but at least four new developments bubbled up in the case of Culebra vs. the U.S. Navy.

(1) A large construction firm which enlarged Pacific islands for the Navy during WWII told The Journal it would be glad to undertake a feasibility study for building an artificial island alternative to Culebra as part of the Atlantic Fleet Weapons Range—if Congress asks it to.

(2) Branded "absolutely unfounded" by Jorge L. Cordova, Puerto Rican Resident Commissioner in Washington—and dismissed by the Navy with a "no comment"—was a *San Juan Star* story citing unattributed "Washington reports" that the Navy and the Puerto Rican government have already arrived at a settlement of the Culebra dispute behind closed doors.

(3) House Armed Services Real Estate Subcommittee Chairman Charles E. Bennett (D-Fla) and at least three other members of his seven-man panel were preparing, at Journal presstime, to fly to Culebra for an on-the-spot inspection tour. (Bennett's Subcommittee is currently considering the Navy's acquisition request for additional acreage on Culebra to enlarge existing safety zones for planned expansion of firing range activities.)

(4) A Naval Research official who had been quoted by Richard Copaken (Washington attorney for the municipality of Culebra) during the Subcommittee hearings as saying that floating platforms—another suggested target alternative—are "clearly within the state of the art," now tells the Journal he was quoted somewhat out of context and that "the concept of large floating stable platforms [needed for the navy's target practice] is fraught with technological problems." This official projected deployment of such a device as falling within the 1985–90 time frame.

ISLAND-BUILDER CONFIDENT

Dillingham Land Corporation of Honolulu (together with Ocean Industries, one of its subsidiaries), a large and diversified land builder and developer, says it feels it could build an island the Navy could use as a target range near Roosevelt Roads if the proper conditions and requirements were met.

"It appears that there are some areas near Culebra where we could do it," company officials told the Journal, "but it would need intensive study. We'd be willing to do a detailed study if the Committee wanted us to," they said, adding that the company would provide its brochure for the Subcommittee's consideration in evaluating possible alternatives.

Dillingham officials said they would be glad to meet with the Navy, take soundings in the Culebra area, try to find suitable shallow banks or rock outcroppings that could be used as a base, and provide a quick answer at reasonable cost.

"We have built islands before," firm officials observed, citing a 75-acre island which the company built (at a cost of $4 million)

in the Bahamas to support facilities for the mining of calcium carbonate.

From 1939 to 1946 the company sponsored a partnership of builders which constructed all naval military installations in the Pacific. "For this project," officials noted, "we took many islands that were too small and made them larger, such as Canton Island."

The firm was awarded the Navy "E" for excellence. It claims to have more "island-building experience" than anyone else, with operations in both the Pacific and the Atlantic.

More recently (1956–58) the company rebuilt Midway Island to lengthen the airstrip there, and built a port/airfield facility at Sattahip, Thailand.

Other company officials conceded, however, that the firm has had no mountain-building experience—and the Navy insists that any man-made targets must incorporate contours and relief similar to the features found on Culebra and other real islands.

Copaken introduced the subject of artificial islands in response to the Navy's repeated assertions that there are no natural islands which it regards as viable alternatives.

Navy officials told the House Armed Services Real Estate Subcommittee that, after studying a list of a score or more possible sites, they concluded that there is no alternative to Culebra.

Navy officials told The Journal that Atlantic alternatives from Newfoundland to the Gulf Coast and the Canal Zone had been checked out and "every logical island in the Caribbean examined," but not one of them fits Admiral Moore's six ground rules as does Culebra. ("This area is unique," Admiral Moore said of the Roosevelt Roads/Vieques/Culebra complex. "It fits our desires precisely.")

But Representative Charles E. Bennett (D-Fla), Subcommittee Chairman, apparenly regarded unsupported conclusions as inadequate testimony, and asked the Navy to provide the Committee with the detailed documentation of its "no other alternative" position.

After considerable questioning on the subject, Bennett and other Subcommittee members indicated they felt the Navy should go back and study some more.

Bennett gave the Navy its choice between detailing the strong points and weak points of other areas at another adjourned meeting (which Bennett says now is not likely to be held) or to present them administratively with members of the staff. Navy officials at CINCLANTFLT Headquarters said they could not provide The Journal with this information before it is given to Congress.

Navy officials told the Journal that if the House panel rejects their request for approval of the Acquisition Report, they have, in effect, no contingency plan ready to go into operation.

"If the Navy directed you to use another target instead of Culebra," the Journal asked at CINCLANTFLT, "which would you use? What would be the next four or five best places?"

In the event of an adverse ruling, officials said, the Navy would have to "sit down and do some homework, some serious consideration." Alternatives?—"As far as we're concerned, there are none." Loss of Culebra, officials said, "would have a significant impact on the training of the Atlantic Fleet."

(Officials also told The Journal the Navy opposes any rearrangement of the target complex, any shift in target utilization, any greater increase in the density of operations in target complexes other than Culebra because this would "increase the safety hazard to Navy personnel." As a matter of fact, the casualty ratio of Navymen to Culebrans killed in accidents is ten to one right now.)

Navy officials also said that the idea of floating platforms as targets, although under study by Navy R&D, has not been keyed in specifically in conjunction with Culebra.

SOME OTHER POSSIBILITIES

Here are some of the other Caribbean island possibilities, as discussed during the hearings and in conversations between The Journal and Navy Officials, with the Navy's assessment as to why they are unsuitable as alternatives.

North Cay—A large island off the Northwest coast of Culebra. It would be "unsafe for a bombing target," the Navy told The Journal, because its necessary safety zone would extend closer to Dewey than the zone radiating from the present targets on Culebrita Island.

Mona Island—A virtually uninhabited island, owned by Puerto Rico, on the other side of the mainland from Roosevelt Roads. It would take a period of years, the Navy said, to set up the necessary surveillance radar installed as on the complex. Its location in the international shipping lanes of Mona Passage would raise questions of international law.

Vieques—This island "does not afford two vantage points from which to determine the fall of a shot precisely."

The Navy and Marine Corps already use the island's eastern 2¾ miles for naval gunfire support/aerial close support targets, the next three miles inland for a Marine landing/maneuver area, and Vieffues' western end for an inert naval ammo depot. The possibility of moving the depot to Culebra, the Marine maneuver area to the western end of Vieques, and the new targets and expanded safety zones for Walleye to the freed area on the east coast would be unworkable, the Navy told The Journal. The reason: the beaches to which it is proposed to move the Marine maneuver area are not suitable for amphibious training, the Marines say.

Desecheo—An island south of Mona, "worse" than Mona in the drawbacks it presents as an alternative, the Navy said.

East Palominos—This island doesn't have enough land mass, the Navy says, lacks suitable air space, and is in a shipping area.

Luis Pena Cay—This island off the coast of Culebra is already used as a rake station and is too close to Dewey.

The Navy stressed that any alternative would "have to be out of the shipping lanes . . . have to have the proper population density . . . have to be out of air travel lanes."

To move to some other island complex altogether would necessitate the transplantation of the Roosevelt Roads base. Bennett told Navy spokesmen he felt they should "come back and give us intensive research about that general pattern where you could still use Roosevelt Roads."

But if some are still interested in finding an alternate target to replace Culebra in the Atlantic Fleet Weapons Range, others claim that a behind-the-scenes alternative may already have been arrived at.

The *San Juan Star* cites anonymous "Washington reports" to give currency to rumors that the government of Puerto Rico (specifically Governor Luis Ferre) has made an "agreement" or a "deal" with President Nixon, SecNav John Chafee, and Henry Kissinger, the President's adviser on national security, whereby the Navy would make some concessions to the Culebrans, but would continue its operations on the island essentially unaltered.

Commissioner Cordova emphatically denied this report and said that Governor Ferre—though known to be a good friend of the President, socially and politically, and said to have been a heavy campaign contributor in the 1960 election—has not yet talked to the President personally about the Culebran issue.

But this non-visit is actually a sore point for some Culebrans, who insist that Ferre should draw on his political assets in an attempt to exert leverage on the Commander-In-Chief.

Puerto Rican Senate President Rafael Hernandez Colon—a member of the opposing political party—said at a news conference after his return from Washington (as reported in the same *Star* story) that the solution of the Culebra-Navy controversy depends upon the pressures Ferre exerts on the White House on behalf of the island.

THE KEY TO THE ISSUE?

Key to Culebra issue? Revised Navy plans to acquire all of Culebra and resettle islanders elsewhere were changed late in April when Commonwealth officials pointed out that Puerto Rico's constitution provides that no municipality can be dissolved unless its citizens vote for dissolution in a referendum.

Apparently the Navy wanted all of Culebra in order to insure safety for use of Culebrita Island as the target for new guided missiles like Walleys, Standard ARM, Condor, Bullpup A and B, and Bulldog—plus the homing glide bomb, Hobo. These require much larger safety "footprints" than the 1½-mile-radius safety zone for inert bombs and machineguns, now used on Culebrita. (Live or explosive bombs are dropped *on* nearby targets at Shark Rock and Palada Cay, however. These targets were "leased" by the Navy from the Commonwealth of Puerto Rico in 1964 and 1965 for $1 a year each, without any prior consultation with the Culebrans. For these and nine other targets totalling 60 acres, Navy pays a total of $11 a year.)

Revised Navy plan calls for getting new 1,600-acre easement on Culebra's northeast peninsula to provide a 2½-mile safety zone for what Navy calls "the precision missile, Walleye"—to be fired against Culebrita (without explosive warhead), along with Hobo glide bombs.

A SecNav official told The Journal on 15 May that the Navy also wanted this bigger safety zone for missiles like "Standard AM, Bullpup A and B, Bulldog, Shrike, and Condor" to be fired against Culebrita. *But the safe official now denies the statement.*

Navy officials tell the Journal that Standard ARM's safety footprint is bigger than Walleye's, while those of Condor and the Hobo glide bomb "are yet undetermined." Condor's, by various reports, is estimated to be much larger than Walleye's.

Thus, the Navy apparently will need some other target—not on the Culebran target range—for Standard ARM, Condor, and possibly other missiles whose safety footprints are too large for safe firing even on the expanded Culebran/Culebritan range.

This hypothesis begs the question: "Why not also fire Walleye and Hobo against this other target, wherever it is (or will be), obviating the need for a bigger safety zone around Culebrita, and thus leave the eastern tip of Culebra at least no worse off than it is now?

CULEBRA: ACT III, SCENE 3—BENNETT PAYS "TRIBUTE" TO PRESS FOR ITS CULEBRA COVERAGE

(By Bruce Cossaboom)

A congressional panel has returned from an on-the-spot visit to Culebra with basically the same devil's advocate stance it showed before—not impressed that the Culebran's case warrants the unique, press-inspired consideration it is said to be getting, but not very convinced, on the other hand, that the Navy really can't find some other target.

Members of the House Armed Services Real Estate Subcommittee, headed by Representatives Charles E. Bennett (D-Fla), returned to Washington last Sunday after a three-day inspection trip to the embattled Puerto Rican island of Culebra, part of the Navy's Atlantic Fleet Weapons Range.

The panel has under advisement a Navy

real estate acquisition proposal to take additional land on the small island to use for safety zones for proposed expanded missile activity. The Culebrans are not only opposing this proposal (which came as a substitute for taking the whole island, a plan the Navy earlier backed down on); they now want the Navy to cease using the island as a target altogether.

Bennett told The Journal shortly after his return from Culebra that the Subcommittee will probably hold one final hearing to have the Navy explain its objections to other island alternatives.

Bennett also said that the case of Culebra would not stand where it does today if it had not been blown out of all proportion by: (1) the news media; (2) potential tourist developers on Culebra; and (3) far left political groups in Puerto Rico.

Bennett said the panel told the Navy that "even if they have to go to great inconvenience and expense," they should not rule out any "alternative on pure dollars and economics" but should determine whether they can come up with a comparable target. But "that's not clear" at the present, Bennett said.

The Navy thinks it has already exhausted the possibilities: this was made clear in testimony before the House panel on 11 June and in various Journal interviews with Navy officials in Washington and at CINCLANTFLT Headquarters in Norfolk. But the House panel wants to *see* the studies—and what results from the panel's "damn the expense" directive. No specific date has been set for the next hearing, Bennett said.

The panel wants the Navy to answer these questions, Bennett said:

(1) If you feel you can't move elsewhere, why not?

(2) If you can move elsewhere, what will it cost and how much inconvenience is involved?

"We are leaning over backwards in this case," Bennett told The Journal. "I hope we can solve the problems for both sides in the dispute."

Bennett said he and other Subcommittee members who made the trip held "very extensive consultations—not hearings—with the people" on two separate visits to the island, went to nearby Vieques, flew over most of the suggested island alternatives in the Caribbean (including Mona Island) and the islets off Culebra itself, and were present on the island during what they were told was supposed to be a typical firing—with as much firing as they usually do.

Presumably, Bennett was playing his typical "devil's advocate" role while talking with The Journal about his visit to Culebra. (By one informed report, this was the *first* time he has ever traveled on Armed Services Committee matters: Bennett has made it clear that he does not enjoy traveling, and his visit to Culebra is a good measure of his determination to give the islanders a full and impartial hearing.)

Asked his impression of the noise level and intensity which the islanders experience—and which he experienced that day—Bennett told The Journal that the actual firing is not as frequent as it would sound from Culebrans' reports to Congress, since much of the time is taken up in studying and plotting the actual shots before and after firing.

"I can understand the problem," Bennett conceded, "but the noise is just barely discernible if you are carrying on a conversation. You have to remain quiet to hear it."

(His statement contrasts with those of islanders who claimed before the House panel on 10 June that the noise is more frequent and more nervewracking, keeps children awake at night, interferes with their health and education, and—according to Culbera's only doctor—causes an "extraordinary presence of nervous disorders.")

Bennett noted that the Culebrans' problem of land takeover is "not nearly as acute as many places on the U.S. mainland." (When asked for a specific example, however, of one of those "places," much less for a place where firing on a mainland U.S. target creates a comparable problem, Bennett said he did not have time to provide one offhand.)

JACKSONVILLE WORSE OFF?

He did say that more people are being displaced for a new post office in his home city of Jacksonville than live on the entire island of Culebra.

Bennett claimed that the Culebrans are getting much more attention than people in comparable situations usually get. Every national park and urban renewal acquisition involves the same thing, he said, but these property owners get far less publicity.

"No other Americans have ever been given so much attention" (in this kind of situation), he observed.

Bennett complained, indeed that the Culebra case has become "unlike most taking of lands." He said it would probably be no different than other property takeovers except for at least three factors:

(1) The exciting confrontation of the dramatic, beautiful little Caribbean island at war with the U.S. Navy—getting widespread publicity through the "wonderful news media." (If the press had similarly gone to bat for those dispossessed by Everglades National Park, Bennett suggested, there might never have been a park there.)

(2) Pressures for development of high-rise apartments for a tourist attraction—reference to such a possibility was made in some of the Culebrans' own testimony and stressed by Bennett at that time as incompatible with the island's idyllic image. (Bennett may have purposefully overlooked, in a typical devil's advocate role, that on 10 June Culebra's Mayor Ramon Feliciano said he would "have no objection to a directive" from the House Subcommittee "to turn Culebra into a National Park, thereby eliminating" any possible doubt about land speculations. The President of the Puerto Rican Senate assured the House Subcommittee that the Commonwealth's Senate would back Mayor Feliciano on such an offer.)

(3) The existence in Puerto Rico of the *Independistas*, a very "left-wing" (perhaps Communistic, Bennett suggested) splinter party "which seizes on any awkwardness in the government's position" to promote its own causes.

Bennett may have been overstating the case purposefully; during the 10 June hearings before his Subcommittee, leaders from virtually every political party on Puerto Rico testified on behalf of the Culebrans.

When SecNav Special Assistant Joseph A. Grimes, jr. opened his testimony the next day by saying, "Culebra is a political issue in the Commonwealth of Puerto Rico," he was corrected sharply (but politely) by Resident Commissioner Jorge L. Cordova. As Cordova (a non-voting member of the House Armed Services Committee) noted, "Culebra . . . *was* perhaps an issue. It is no longer an issue. The Navy has been quite successful in uniting Puerto Rico, which was otherwise divided and [which] is still divided on many *other* issues; but *not* on Culebra."

Bennett said none of the Culebrans with whom he talked had any positive remarks to make about what the Navy has tried to do in an effort to improve relations with the islanders—including the opening of a free-access sealane in the formerly completely restricted perimeter. (The Navy's Commander Caribbean Sea Frontier appointed a Navy captain to be his "personal representative for community affairs" on Culebra and for Vieques on or about 11 June. Possibly, not enough time has elapsed for this officer's work to take effect. One problem may be that, as of the last report, the Navy still did not have a Spanish-speaking officer on Culebra.)

As an example of the over-exaggerations which Bennett said may have been made in the attempt to describe the harmful effects of the shelling, Bennett cited the case of a species of parrot which is said to have been killed off as a direct result of the shelling. He noted that the bird had been "extinct for a long time." (See box on "The Ecology of Culebra.")

Bennett said that, beyond the resolution of the controversy with the Navy, the island's long-range future is likely to be one of rather rural, undeveloped status, since it is not very large and will never have a very substantial population.

He compared Culebra to the larger, nearby islands of Vieques, which has hospitals, industries, high schools—none of which could Culebra sustain, even if the Navy left the island entirely.

If their land is taken or condemned (there is no mention of "condemnation" in the Navy's current acquisition report before the Committee), "every penny the people have in it will be paid to them," Bennett stressed.

CULEBRANS GATHER SENATORIAL SUPPORT

Another Senator has enlisted on the side of the Culebrans in their battle with the Navy as the rhetorical bombardment shifts to the Senate side of Capitol Hill.

While the House Armed Services Real Estate Subcommittee awaits the Navy's presentation of its study of alternatives to Culebra as a part of the Atlantic Fleet Weapons Range, some new voices are joining the chorus of those in House and Senate who have spoken out on behalf of the Culebrans.

Both Massachusetts Senators, Edward Brooke (R) and Edward Kennedy (D), have expressed concern about the matter.

Now New York's junior Republican Senator, Charles E. Goodell, has held a New York City press conference with Puerto Rican leaders (from both the U.S. and the Commonwealth), in which he issued a strongly pro-Culebra statement.

He publicly called on the Senate Armed Services Committee to hold hearings on the Culebra affair.

Goodell also announced formation of a nationally based Save Culebra Committee, made up of Culebran and Puerto Rican leaders in New York and any national dignitaries who might wish to lend their names to the cause.

Goodell's office said one of the functions of the new popular-action group will be to develop "facts on the bad effects of the shelling of the island."

Juan Feliciano, the brother of Culebran Mayor Ramon Feliciano, will be a member of the SCC.

For the past month or so, Goodell's office told The Journal, the Senator has been working "quietly" on behalf of the Culebrans, meeting with Puerto Rican Governor Luis Ferre and other Puerto Rican leaders.

Goodell is said to have "exerted pressure" on the White House, the Navy, and the House Armed Services Committee, but finally decided to bring the matter out into the open, after it became clear to him that "all these options seem to be closed, with the Senate the only path left."

ALL DOORS SLAMMED

"Since all of the doors have been slammed in the face of the Culebrans," Goodell said at the New York meeting, "I have suggested that the Senate Armed Services Committee begin an investigation of the Culebra issue and of the Administration's handling of it."

Goodell's office told The Journal that among the Administration witnesses the Senator hopes would be called are Henry Kissinger (the President's National Security Adviser), Secretary of the Navy John Cha-

fee, and Assistant Secretary of the Navy (I&L) Frank Sanders.

Goodell stressed that he still hoped some good would come from the House Armed Services Real Estate Subcommittee's consideration of the Navy's land acquisition proposal and from Senator Henry Jackson's request to the Navy for a "full report" on the Culebran situation.

But "neither that Subcommittee nor the Navy is disposed to act favorably on the rights of Culebrans," Goodell added.

Goodell's New York speech dwelled on the economic, educational, and ecological consequences of the Navy's shelling on Culebra, and on the Navy's—now abandoned—original plan to take over the entire island.

FULBRIGHT SPEAKING OUT?

Meanwhile, Senator William Fulbright (D-Ark) reportedly was ready at Journal presstime to make a pro-Culebra speech on the Senate floor. He earlier had written the Navy expressing his concern about the issue and asking supplementary information. He was expected to include the Navy's reply in his floor statement.

And, in a related development, Representative Shirley Chisholm (D-NY) hosted on Tuesday, July 7, a "caucus" of Congressmen who have now expressed active interest in the Culebra issue. Staff members for seven Senators and six Representatives showed up, in addition to Congresswoman Chisholm herself and Puerto Rico's Commissioner Jorge Cordova, a non-voting member of the House. The meeting was reportedly intended to take an inventory of who was taking what actions, with a view toward further discussions of new initiatives that should be taken on behalf of the Culebrans.

On the Senate side, staffers attended from the offices of Senators Edward W. Brooke (R-Mass), J. W. Fulbright (D-Ark), Charles E. Goodell (R-NY), Henry M. Jackson (D-Wash), Jacob J. Javits (R-NY), Edward M. Kennedy (D-Mass), and Hugh Scott (R-Pa).

Members of the House who were represented included six New York Democrats (A. K. Lowenstein, Mrs. Chisholm, R. L. Ottinger, Ben S. Rosenthal, W. F. Ryan, and J. H. Scheuer) and C. A. Vanik (D-Ohio).

Meanwhile, as reported in last week's Journal, Senator Henry M. Jackson, Chairman of the Interior and Insular Affairs Committee and a senior member of the Armed Services Committee, has asked the Navy for a "full report" on Culebra, but had not received an answer at Journal presstime.

Jackson has also reportedly agreed to let Jorge L. Cordova, Puerto Rica's Resident Commissioner, personally air the Culebrans' case before his Armed Services Military Construction Subcommittee.

The office of Senator Brooke told The Journal (4 July) that Armed Services Committee Chairman John C. Stennis (D-Miss) has now placed an indefinite "hold" (it has been for 30 days) on any Navy action on Culebra until the issue has been resolved "satisfactorily."

Presumably, this means that the Navy's 30 April real estate acquisition request—now pending before the House Armed Services Real Estate Subcommittee, headed by Representative Charles E. Bennett (D-Fla)—cannot be acted upon without a counterpart affirmation from the Senate panel.

Culebrans may thus have a second "court of last resort" if the House panel approves the Navy's proposal.—Bruce Cossaboom.

Senator Henry M. "Scoop" Jackson (D-Wash), ranking member of the Senate's Committee on Interior and Insular Affairs, a senior member of the Senate Armed Services committee and reportedly President Richard Nixon's original choice to be Secretary of Defense—recently asked the Navy for a "full report" on Culebra, but had yet to get an answer as of Journal presstime. Senator Jackson's staff told The Journal that he has written to Puerto Rico's Resident Commissioner, Jorge L. Cordova, agreeing that Cordova personally could air the Culebrans' case before Jackson's Armed Services Military Construction Subcommittee, although the Subcommittee has no direct authority over the Navy's 30 April real estate acquisition request. Some confusion exists over whether Senator Jackson wrote the Navy as a member of the Senate Armed Services Committee or as Chairman of the Senate Interior and Insular Affairs Committee. (He is also Chairman of the Senate's Subcommittee on Government Operations for National Security Affairs and International Operations).

Senator Edward W. Brooke (R-Mass), influential member of the Senate Armed Services Committee, told The Journal on 3 June that Committee Chairman Senator John Stennis (D-Miss) had placed a "30-day 'hold' on any further action on the part of the Navy" with respect to Culebra (Journal 13 June). Now, Senator Brooks' staff tells The Journal that the "hold" is "indefinite"—the Committee has informed the Navy that no action whatever is to be taken until the issue has been "resolved satisfactorily." Presumably, this means that the Navy's 30 April real estate acquisition request—now pending before the House Armed Services Real Estate Subcommittee—cannot be acted upon without an affirmative, specific okay from the Senate body. Thus, even if the House body issues a report favorable to the Navy, Culebrans may have a second "court of last resort" before the Senate.

JOURNAL READER OFFERS AN ALTERNATIVE

An alternative for the Culebran firing range which appears to fit at least five of the Navy's six criteria has been offered to The Journal by a U.S. citizen who owns an exclusive option for a four-mile-long peninsula, rising to an elevation of 800 or 900 feet on a barely inhabited island east of Roosevelt Roads Naval Station. The Navy can have the target for $3-million, The Journal was told.

The peninsula in question is arid and barren, but apparently has the ground contours stressed by the Navy as one prerequisite for an alternative target site. The island's 900-foot high ground separates this barren peninsula from an inhabited portion reported home to about 200 to 250 people and 800 goats—in contrast with 726 Culebrans). The Navy has stressed that high ground, like that used for Culebra's rake station at the Big Mary Observation Post (Journal 23/26 May and 6 June), is needed to calibrate the fall of each round fired or bomb dropped.

While The Journal does not intend to second-guess Navy studies of possible target alternatives, the island in question is particularly intriguing in that it apparently meets at least five of the Navy's six basic criteria. Moreover, it is closer to the Roosevelt Roads naval complex than some other alternatives which the Navy has been studying. These criteria require an area which:

(1) Allows conduct of simultaneous ship-to-shore and aerial bombardment exercises;

(2) Is relatively free of commercial aircraft and shipping;

(3) Enjoys good weather;

(4) Has a low population density with favorable geography, oceanography, and topography;

(5) Is contiguous to Navy support activities; and

(6) Preferably is on U.S. territory.

The island peninsula in question may not have been a viable alternative at the time Navy studies of Culebra target needs were undertaken, in part because of assumptions that certain privately owned lands would not be released. The Journal has been offered a $150,000 commission for sale of the peninsula. Further details on this intriguing offer (the island, not the commission—although we're happy to be above-board about the whole thing) can be checked out at 1710 Connecticut Avenue. Tempting as it may be, The Journal is not in the real estate business and will forgo the commission, much as we need the money.

THE ECOLOGY OF CULEBRA

Acting Interior Secretary Fred J. Russell wrote the Society of Friends of Culebra last 23 April that the Department of the Interior was "concerned about the possible damage to nesting birds on Culebra Island and adjacent small cays caused by the use of these areas as gunnery targets." He referred specifically to Culebra as a "National Wildlife Refuge" (Journal 6 and 13 June).

On 20 and 22 June, Mr. Ricardo Cotte, U.S. Game Management Agent for the Department of the Interior on Puerto Rico, provided by telephone the following statement attesting to the unique ecology of Culebra. Having heard one senior civilian Navy official deride the alleged massacre of "sooty terns" on the island, we urge our readers—and most respectfully, the House Armed Services Real Estate Subcommittee, as well—to read this poignant summary. Perhaps Chairman Bennett then will understand why The Journal doesn't fully share his view that the "harmful effects" of the island's shelling have been "over-exaggerated."

"Culebra and the surrounding cays constitute an important eco-system in the archipelago east of Fajardo. The cays and Culebra itself provide important nesting grounds for various migratory oceanic birds, including the sooty tern, the nobby tern, laughing gulls, and possibly roseate terns as well.

"In addition, there are several important lagoons on Culebra itself, including Laguna Zoni on the eastern part of Culebra and Flamingo Lagoon, behind Flamingo Bay, in the impact area. The Bahama Pintail, a rare and endangered species, is found in these lagoons. Other species of birdlife found on Culebra include the brown pelican and the blue-faced booby.

"There are also endemic populations of white-crowned pigeons and red-necked pigeons; these birds are very rare in the area. Their former nesting grounds were in St. Croix, where Harvey Aluminum built a large aluminum plant and Hess Oil built an oil refinery, thereby forcing the birds to seek refuge in Culebra and St. Thomas.

"Although the Island of Culebra itself is not technically a part of the Wildlife Refuge, which includes all of the publicly owned cays surrounding Culebra, the Government of Puerto Rico has made Culebra a game refuge where no hunting is allowed.

"The island is itself unique in terms of both geology and vegetation. Culebra is of volcanic origin and the geological formations there are of great interest. The island is very rich in green jade, for example. The Resaca Mountains, near the Observation Post, have unique vegetation, particularly the Red Manjack trees and White Manjack trees; these trees provide the staple food of the pigeons mentioned above, as well as of the white-winged dove and the zenaida dove, which are found on Culebra.

"The whole shape of Culebra is amoebic, with many peninsulas and coves. This adds greatly to the physical beauty of the island. Flamingo Bay, with its long, curved white-sand beach is one of the most beautiful bays in the Atlantic. Culebrita Cay also has one of the most beautiful white-sand beaches in the entire Carribean. Another important beach is Balcon Beach, facing North Cay, which is a "whistling beach." It is a rare phenomenon, acknowledged by science, that on a very few beaches in the entire world the sand "whistles" or "whispers" when the wind blows. Balcon Beach is an example, in addi-

tion, there are several smaller beaches with extraordinarily beautiful rosy-white or pink sand. These are produced by the action of the waves on the coral reefs.

"The corals on the eastern and southeast portion of the island are very rare and beautiful; the only other area with similar growth is found in the St. Johns National Park. These corals, together with the beaches of unusual sinuosity, enhance the extremely rich marine environment. The water around Culebra and the surrounding cays is of great clarity; moreover, it constitutes a magnificent sporting and commercial fishing ground.

AN ECOLOGICAL DISASTER OCCURRED

"Two or three years ago on the northwest peninsula of Culebra, in the impact area, an ecological disaster occurred. The impact area contains primary nesting grounds of the sooty tern, an oceanic migratory bird which is similar to the gull, though more slender and even more graceful. Approximately 27 to 35 acres constitute the nesting grounds. Shelling of the impact area apparently caused a grass fire which burned a huge area, from 15 to 25 acres during the nesting season. This must have occurred sometime between March and May, because the birds were starting to nest. Because there are one to two eggs per nest and from three to four nests per square meter, the number of eggs that were destroyed is enormous. In addition, [I found], a number of birds which have been burned by fire."

Mr. Cotte has pictures of the incident, but said he cannot release them without prior permission of the Navy, which has "primary interest" over the island.

CORDOVA ADMITS P.R./NAVY DEAL—PROBLEM "TOO DELICATE" TO DISCUSS WITH CULEBRANS

(By Ben Schemmer)

Puerto Rico's resident Commissioner told The Journal in an interview early this week that an agreement *had been reached* as of late 1968 between the Navy and the Commonwealth of Puerto Rico for the Navy to take over the entire island of Culebra. Commissioner Jorge Cordova admitted, in effect, that he and Governor Luis Ferre were made aware of the "behind the scenes" agreement during transition discussions they had personally with outgoing Governor Sanchez Vilella, who advised the newly elected Ferre that he "had a problem" since the Culebrans soon would have to be resettled.

Presumably, Ferre's party would stand to benefit politically from revelation now of any such "behind-the-scenes" deal made under the previous, opposition administration, since it could take credit for having persuaded the Navy to change its takeover plan in favor of the new easement on the western third of the island. But Cordova also admitted, in effect, that neither he nor Ferre took *any* action for over a year to advise the Culebrans that an agreement had been reached to resettle them; and Cordova admitted they also failed to advise the Culebrans in April that the Navy had new plans for the easement which is now in dispute before the House Armed Services Committee.

Cordova said that he and Ferre were briefed on the new Navy plan several weeks before it was publicly announced by the Navy in San Juan on 24 April. Cordova said that the Culebrans had not been clued in simply because the problem was so "delicate" and because he was "not aware" that the Culebrans really were concerned—until Mayor Feliciano wrote him early in April, enclosing a copy of an appeal Feliciano had sent to the President late in March.

FACTS DON'T FIT

If Cordova's statement is true—that an agreement had been reached late in 1968 to turn Culebra over to the Navy—then Navy spokesmen have been less than candid with the press in denying it. For instance, the Navy's Director of CHINFO's Media Relations Division wrote to the United Nations correspondent for *Claridad* on 2 March of this year—apparently weeks *before* the Navy changed its mind about acquiring all of Culebra—*denying* there were any plans to expel the Culebrans from their island. Specifically, the Navy was asked by *Claridad* in a letter dated 17 February, "Does the Navy intend to expel the inhabitants of Culebra?" and "Does the Navy intend to put pressure on the inhabitants of Culebra in order to force them to leave their island?" The Navy reply (of which The Journal has a copy) to these two questions reads, "The Navy has no jurisdiction over the civilian inhabitants of Culebra. Therefore, the answer to the above two questions is no."

In the strictest technical sense, the 2 March Navy reply could be called truthful. But in any reasonable interpretation, it would have to be called "quibbling"—if Cordova's allegations about the takeover agreement are factual.

Cordova told The Journal that he and Ferre were briefed personally about the Culebra takeover agreement by SecNav Special Assistant Joseph A. Grimes, Jr., early in 1969—shortly after the Nixon Administration took office—with the Commander-in-Chief Atlantic Fleet also present. Cordova said that he has since met with Grimes "four or five" times, and that Governor Ferre had met with Grimes "two or three times" to discuss problems about resettling the Culebrans. Navy Assistant Secretary Frank Sanders was present at several of these meetings.

Cordova has since spoken out strongly not only against the Navy's new request for a safety zone easement on the island's western tip but against continued Navy ship-to-shore bombardment operations on the island's eastern tip as well.

In a telephone interview, the President of the Puerto Rican Senate (and leader of the opposition party), Rafael Hernandez Colon—reportedly the leading candidate to oppose Ferre in the 1972 gubernatorial election—told The Journal:

"The information you have revealed confirms that both the Sanchez Vilella and Ferre administrations have not kept the people of Puerto Rico informed as to their negotiations with the Navy. This information comes as a complete surprise, and tends to contradict Ferre's own statements about Culebra."

Colon said he was in Washington because he had "lost faith" in Ferre's and Cordova's efforts in behalf of the Culebrans. He said that he had just met with Senator Henry Jackson (D-Wash) about the Culebran issue, but he would reveal no details of their conversation.

CULEBRA HEARINGS RECONVENE WITH HOST OF QUESTIONS AT ISSUE

(By Ben Schemmer and Bruce Cossaboom)

Governor Luis Ferre of Puerto Rico, who had been expected momentarily to shed his ambivalent neutrality on the Navy's request to expand its Culebran bombardment range, apparently plans to remain silent until House Armed Services Subcommittee hearings have run their course. Ferre was expected last week to announce that the future of Culebra is "not negotiable" and to ask the Navy to leave the island entirely.

High Administration and several congressional sources told The Journal such a stand by Ferre would have a decisive impact in rallying White House support for the Culebrans. (Ferre reportedly was one of the largest single contributors to President Richard Nixon's 1960 campaign and is said personally to have raised substantial contributions for the President's successful 1968 bid. Ferre also told The Journal weeks ago that he is a close personal friend of Defense Secretary Melvin Laird—but Laird has yet to comment on the Culebra issue.)

Puerto Rico's Resident Commissioner in Washington, Jorge Cordova, told The Journal that he had strongly urged the Governor on Friday, 10 July—when Ferre returned from a trip to Japan and Southeast Asia—to speak out publicly on behalf of the Culebrans. Cordova said he and Ferre had discussed the Culebran issue twice that day. He expressed "surprise" that Ferre had not made the expected statement at a major news conference which Ferre held upon his return to Puerto Rico last Saturday. Cordova expressed his "disappointment" when told that The Journal had been advised at presstime that no new statement would be made by Ferre until hearings before the House Armed Services Real Estate Subcommittee had "run their course."

Ferre's ambivalence on Culebra has been of concern to the islanders and has puzzled officials in Washington, since the Culebra issue has united virtually every political faction in the Commonwealth. Observers here suggest that Governor Ferre stands to lose any political benefits he could rally by speaking out on behalf of the Culebrans *if* he defers such a stand too long—particularly in view of revelations (Journal 11 July) that he was privy, in late 1968, to details of an agreement made between the Navy and the previous administration on Puerto Rico whereby the Navy would take over the entire island and have the Culebrans resettled. Ferre (and others in his administration who were briefed by the outgoing administration and by the Navy) never advised the Culebrans that such a deal had been made.

DISCUSSIONS "CONFIDENTIAL"

When asked early this week about his part in that agreement, SecNav Special Assistant for Culebra Joseph A. Grimes, Jr, would say only, "All of my discussions with the Commonwealth of Puerto Rico have been on a confidential basis. . . . We have not divulged anything publicly about those meetings." Grimes admitted, however, that he had met with Governor Ferre and with Commissioner Cordova shortly after Grimes assumed his current Pentagon post in February 1969. He denied that CINCLANTFLT Admiral Ephraim Holmes was present at any meetings with Cordova or Puerto Rican officials, as had been alleged by Cordova in a Journal interview (4 July) when he spelled out the deal on Culebra allegedly agreed to by previous governors of Puerto Rico.

Ferre's new stand on behalf of the Culebran municipality was expected to coincide with resumption of hearings on the Navy real estate acquisition request for a new easement on the eastern third of Culebra. But Ferre's office told the Journal no such statement should be expected. Dr. Roland Perusse, Special Assistant to the Governor, told the Journal that Ferre felt "it was necessary for the Navy to guarantee the peace, welfare, and happiness of the people on the island, whatever solution is arrived at or taken into consideration." But Perusse also said that Ferre wants to see "the HASC hearings run their course before he intercedes."

The Navy acquisition request is now pending before the House Armed Services Real Estate Subcommittee. At Journal presstime, the subcommittee was to reopen its Culebra hearings on Friday, 17 July.

One of the Subcommittee's major purposes is to have the Navy explain in detail its analyses of possible alternatives for the Culebran bombardment and gunnery range. When the Navy gave the Subcommittee on 11 June a summary of those alternatives, Committee Chairman Charles E. Bennett (D-

Fla) cut the Navy off and asked Navy witnesses to do more homework and to return prepared to answer specifics they were unable to discuss at that time. For instance, the Navy had ruled out as an alternative target site the island of Mona, midway between Puerto Rico and Cuba, in part because there was no radar equipment for command and control of the ship and aerial bombardment training. But Navy witnesses were unable then to offer any figures on the cost involved or time needed to set up the required radar and telemetry network. The Subcommittee also asked the Navy to take a new and thorough look at the possibility of using artificial or floating islands as targets, and of using Navy ships for the rake (spotting) stations to score its gunnery/bombing exercises.

SENATOR JACKSON GETS NO NEW DOPE

Navy officials have been unwilling to discuss the results of any such analyses prior to making the data available to the House Armed Services Subcommittee. But no mention whatever of artificial or floating island alternatives was made in the Navy's 7 July reply to Senator Henry M. Jackson's (D-Wash) request of 19 June for a full report on the Navy's use of and plans for Culebra. The Navy's reply, signed by Assistant Navy Secretary (I&L) Frank Sanders and made available to the Journal by Senator Jackson's office, provides virtually no new insight on the Culebra issue.

The Navy's reply to Senator Jackson dismissed five nearby alternative target sites on the following grounds:

OTHER ISLANDS CONSIDERED

Mona Island

"1. The island lies in the middle of Mona Passage, a major international waterway with an average daily ship count of 17 ships within a 50 mile radius of the island. The United States is presently engaged in preliminary international negotiations with respect to extending territorial waters from 3 to 12 miles. Fundamental to the U.S. position is that the straits of the world will be left as high seas. Any U.S. proposal to restrict Mona Passage might adversely affect the U.S. negotiating position.

"2. There is a lack of reserved air space since the area is traversed by three international airways with Mona Island a major intersection for reporting purposes.

"3. Western Puerto Rico does not have a command and control facility comparable to that of Roosevelt Roads in the east, therefore, adequate air/surface surveillance and warning is not possible.

"4. The flat topography would make difficult the installation of adequate spotting facilities and profile trackers."

Isla Desecheo

"1. Located 27 miles northeastward of Mona Island and 12 miles westward of Punta Higuera, Desecheo is a small island a mile in diameter. Since it is in the Mona Passage, the same undesirable international waterway aspects associated with Mona Island are present here.

"2. As with Mona Island the lack of reserved air space and command and control facilities is also present.

"3. The size of the island is not sufficient to locate spotting facilities and profile trackers.

"4. The U.S. Department of Health, Education and Welfare and the Puerto Rico Medical School have an agreement for joint use of the island for study purposes.

Isla Palominos

"1. This small privately owned island is located in the Fajardo Roadstead only 6800 yards from the mainland of Puerto Rico. The area is a major recreational waterway and includes a commercial marina on Isla Marina, 750 yards from the mainland. The footprints of the inert Walleye missile fired at Isla Palominos would fall within 500 yards of this marina.

"2. The island does not contain sufficient land mass (1100x500 yards) for a target impact area.

"3. There is a lack of suitable reserved air space which will become more severe with the completion of the planned Fajardo commercial airport."

Caya Lobos

"1. This privately-owned island is located in the Fajardo Roadstead 5300 yards from the mainland in the same recreational waterway as Isla Palominos. It is a tourist area and contains a small aircraft landing strip.

"2. The footprints of an inert Walleye missile would fall within 300 yards of the mainland and would include Cayo Icacos.

"3. The land mass (600x300 yards) is insufficient for a target impact area."

Isla Caja de Muertos

"1. This island is 5 miles off the south central coast of Puerto Rico mainland and 7 miles from the city of Ponce, a major shipping port and center of the sugar refining industry.

"2. There are no command and control facilities to provide surveillance and warning.

"3. The land mass of the island (1½ x ½ miles) is insufficient to locate spotting stations and profile trackers. Additional land in the vicinity would be required."

OTHER DEVELOPMENTS

Other developments have been breaking fast on the Culebra issue:

The New York Times in a lead editorial of 10 July asked: "Can anyone really believe that the only suitable target area in the entire Atlantic Ocean for testing a new generation of guided missiles and glide bombs is a 7,000-acre island off Puerto Rico which 726 Americans call home? . . . It would be a salutary example of what one likes to think the United States is all about if the mightiest Navy in the world now decided on its own to weigh anchor and go elsewhere to explode its new arsenal, leaving 726 islanders in peace and quiet."

The Washington Post in an editorial of 14 July said: "It is time that high level attention be paid to the controversy over Culebra. . . . Repercussions from this use of an inhabited island as a target have spread far beyond Culebra itself. Many Puerto Ricans see in it evidence of a general lack of sensitivity in Washington to commonwealth problems . . . relations between Washington and San Juan are enormously influential in our dealings with the rest of Latin America. Even though the Navy finds Culebra a convenient area for training operations, we simply cannot afford as a nation to get into the posture of putting bombs ahead of people."

A New York film company has shot 10 hours of documentary film on Culebra, including scenes of Navy ships firing against the island (reportedly, the Navy had denied such permission to CBS and NBC news), and plans to distill this footage into a one-hour documentary in time for the HASC hearings and for sale to a nationwide TV network.

WHITE HOUSE INTERESTED?

White House interest in the Culebran issue peaked on 4 July when Presidential Counselor Bryce Harlow visited Puerto Rico for a "routine" Independence Day ceremony. Commissioner Jorge Cordova told The Journal he discussed the Culebra issue then with Harlow (who also serves as Chairman of the White House Excess Property Committee) for 15 to 30 minutes. Cordova said Harlow apparently had not been aware of the Culebra problem "other than as a newspaper or magazine reader." Cordova said also he had not heard from any White House official since (or before) about the Culebra problem—notwithstanding the fact that on 11 June HASC Subcommittee Chairman Charles E. Bennett (D-Fla) said: "The White House itself ought to be involved . . . at least an offer to the White House to become involved in this decision is a wise course of action for the committee to take . . . We will submit the evidence to whomever will look at it in the White House and discuss it with the highest level of our government and try to see if they can resolve it in some manner . . . This is government in the open."

THERE MUST BE ANSWERS

The questions below sum up the issues expected to be addressed as the House Armed Services Real Estate Subcommittee prepares to wrap up its hearings on Culebra:

(1) Where will the Atlantic Fleet fire new guided missiles and glide bombs whose "footprints" are larger than Walleye's or Hobo's—i.e., missiles which cannot be fired on the Culebrita target complex within the Navy proposed new safety easement on Culebra?

(2) Could the Navy use the targets required for these larger-footprint weapons for the Walleye and Hobo glide bomb training now planned for Culebrita—thus obviating the need for new safety easements on Culebra's eastern peninsula?

(3) Where would the Navy, under its Culebra contingency plan, conduct Atlantic Fleet gunnery and air-to-ground training in the event that Congress or the Supreme Court precludes continued use of—or expanded operations on—Culebra? How much would Atlantic Fleet training really be degraded using such contingency targets, and what would the resulting inefficiency cost, both in dollars and in fleet readiness?

JOURNAL'S ALTERNATIVE WON'T HACK IT

A Journal reader's offer to sell his option on a four-mile-long uninhabited peninsula on the eastern tip of Virgin Gorda, 47nm east of Culebra, as an alternative to the Culebran firing range, has been rejected by the Navy.

SecNav Special Assistant Joseph A. Grimes, jr., asked The Journal for details on the property shortly after the offer was spelled out in the 4 July issue. Subsequently, Grimes told The Journal the peninsula on Virgin Gorda had been considered by the Navy in earlier studies of target alternatives and still had to be ruled out.

Grimes said 1960 census figures showed that Virgin Gorda's western tip had a population of 564, not 200–250 as indicated by the Journal reader who offered to sell his option for the uninhabited eastern tip. Grimes indicated that even later figures suggest the island may now have close to 700 inhabitants.

Another major obstacle, Grimes said, is that Virgin Gorda does not offer the variety of targets found on Culebra and needed for simultaneous operations. Culebra offers two air-to-ground targets and one for ship-to-shore gunnery as well. (The third air-to-ground target which the Navy considers a necessity for simultaneous use is on the eastern tip of Vieques, roughly 12nm south of Culebra.) At most, the Virgin Gorda alternative offers only one air-to-ground target, according to Grimes.

In addition, Grimes cited problems of getting the protected or restricted airspace and control over surface craft which the Navy has over the Culebran target complex by virtue of Presidential Executive Orders designating it a defensive sea area restricted

zone. (Virgin Gorda lies in the British, not U.S., Virgin Islands.)

Representative Charles E. Bennet (D-Fla), Chairman of the House Armed Services Real Estate Subcommittee which is investigating the Culebra question, also called The Journal to ask about the 4 July offer, and said he wanted to ask the Navy to look into it. Advised of Grimes' findings, Chairman Bennett told The Journal he still planned to ask the Navy to address the alternative, but in more depth, when hearings reconvene on the Culebra issue.

Navy Calls Culebra "Irreplaceable"—Laird Says Re-Evaluate

(By Bruce Cossaboom)

The fate of Culebra is still up in the air, as the House Armed Services Real Estate Subcommittee has held its last public hearing on the Navy's study of possible alternatives to Culebra as the "keystone" of the Atlantic Fleet Weapons range.

Subcommittee Chairman Charles E. Bennett (D-Fla)—at its conclusion—announced that the panel "will have an adjourned meeting at some later date to resolve what we will do about this thing."

But it appears that the hearts of the Subcommittee are with the Navy.

The members did not seriously question at the hearing the Navy's contention that Culebra is "irreplaceable" and that it had investigated "every conceivable alternative" and found none which could be acceptable.

Chairman Bennett did say: "There are just many places in the U.S. where people make sacrifices much greater than the people of Culebra are being asked to make. They should not be asked to make these sacrifices unless the Navy really does need this for the national defense of our country."

And: "It still remains if the Navy really doesn't need this range, the Navy shouldn't have it. And that is the thing we have to decide. We have to decide whether the Navy needs it or not."

The Navy seeks to acquire a new non-habitation easement on Culebra's eastern tip for safety zones—an easement which would leave about one-third of their island for the Culebrans' use.

If the Subcommittee makes its decision on the basis of the evidence submitted by the Navy at the hearings, it could hardly rule against the Navy.

The adversary proceeding atmosphere which characterized Chairman Bennett's confrontation with both Culebrans and Navy officials at the 10–11 June hearings changed dramatically in the second-round hearing 17 July.

The devil's advocate sounded more like the witness' coach.

The Navy's Statements

The witness, Joseph A. Grimes, jr., Special Assistant to the Secretary of the Navy, brought two different statements to the hearing. He read the shorter one—a six-page general discussion of why the Navy needs an Atlantic Range, why the range is located where it is, and why Culebra is an essential part of that range—in open session.

The longer statement—11 pages going into a little more detail on four major alternatives (and dismissing all the rest of the hundreds of islands in the nearby Caribbean basin as "too small" or "too far")—was not read at all by Grimes but was distributed to the Subcommittee members at the start of the hearing. The Journal obtained a copy afterward.

But based on either statement, there was remarkably little questioning on the alternatives by Subcommittee members.

Grimes discussed briefly why Mona, Desecheo, Isla Caja de Muertos, Isla Palominas, Cayo Lobos, and Vieques do not fit the bill—ground that had already been sketchily covered at the first hearing. Nor was Grimes' statement much of an expansion of the "full report" asked of the Navy and received by Senator Henry Jackson (D-Wash) (Journal 18 July).

Overkill on an Alternative

The only new alternative raised and given any attention in the questioning—Virgin Gorda—was tossed out at the outset of the questioning by Chairman Bennett, who noted that it had been suggested by a Journal reader.

Chairman Bennett and witness Grimes teamed up for the better part of five minutes to rule out the Virgin Gorda proposal (some 10 separate objections were raised against it) with much the same data printed in The Journal 18 July ("Journal Alternative Won't Hack It") and already given to Bennett by The Journal.

The Answers Have Varied

Puerto Rico's Resident Commissioner Jorge Cordova—a nonvoting member of the Subcommittee—did press the Navy for replies to questions asked repeatedly and never more than cursorily answered.

At one point, questioning Grimes, Cordova remarked: "The answers . . . have varied from time to time, Mr. Grimes, that is why I want to clear it up." The remark was specifically addressed to the size of the bombs being dropped in the area and whether they were "live" bombs, but it could equally appropriately have been applied to most of the subjects covered.

Apparently SecDef Melvin Laird hasn't been satisfied with the Navy's answers, either. *The San Juan Star* has quoted Governor Luis Ferre's announcement of a telephone conversation he had with Laird: "The Secretary of Defense personally assured me today (15 July) that because of my efforts he has ordered Naval authorities to make an immediate re-evaluation of the Culebra situation." Ferre said Laird had promised to call him upon completion of the study, expected in about a week's time. No announcement of the second call had been made as of Journal presstime.

On another tack, Commissioner Cordova developed an illuminating comparison of the Atlantic and Pacific Fleet Weapons Ranges, with the Pacific range clearly, in Mr. Grimes' estimation, coming in second-best. Apparently no island—or, at least, no *available* island—in the Pacific range offers the "ideal" features the Navy desires on Culebra, and the Navy has had to "make do" with less (a course they reject for the Atlantic range).

The Vieques Trade-off

Grimes' longer statement for the record ruled out one early proposal for an alternative to the expanded Culebra Walleye range simply by misstating it. Puerto Rico Governor Luis Ferre suggested to The Journal on Culebra (23/26 May) that, since the Navy and Marine Corps already use Vieques' eastern 2¾ miles for naval gunfire targets, the next three miles inland for a Marine landing/maneuver area, and Vieques' *western* end for an inert naval ammo depot, the Navy might move the Vieques ammo dump to Culebra, the Marine maneuver area to the *western* end of Vieques, and use the freed area on Vieques' eastern tip for its new Walleye targets.

A CINCLANTFLT spokesman later told The Journal that the big objection to this trade-off is that the western end of Vieques doesn't have beaches as suitable as those on the island's eastern tip for marine amphibious training.

But Grimes ruled out the Vieques alternative by erroneously restating the proposal. He said: "The eastern end of Vieques has been mentioned as an alternative Walleye target. It has also been suggested that the other targets in the air-to-ground target sub-area to the east of Culebra be moved to the eastern end of Vieques. What these suggestions fail to recognize is that the *eastern* end of Vieques is already one of the three air-to-ground target sub-areas in the Culebra/Vieques complex. Furthermore, the Vieques impact area is more restricted than the two sub-areas near Culebra because safety regulations do not permit simultaneous amphibious landings, artillery fire and air-to-ground ordnance delivery unless these operations are part of a coordinated exercise."

Three Key Issues

The hearing also failed to produce any discussion—much less answers—on three key issues raised by the Journal 18 July:

(1) Where will the Atlantic fleet fire new guided missiles and glide bombs whose "footprints" are larger than the Walleye's or Hobo's—i.e. missiles which cannot be fired on the Culebrita target complex within the Navy's proposed new safety easement on Culebra?

(2) Could the Navy use the targets required for these larger-footprint weapons for the Walleye and Hobo glide bomb training now planned for Culebrita—thus obviating the need for new safety easements on Culebra's eastern peninsula?

(3) Where would the Navy, under its Culebra contingency plan, conduct Atlantic Fleet gunnery and air-to-ground training in the event that Congress or the Supreme Court precludes continued use of—or expanded operations on—Culebra? How much would Atlantic Fleet training really be degraded using such contingency targets, and what would the resulting inefficiency cost, both in dollars and in fleet readiness?

But the biggest unanswered question of all involved something brought up at the first hearing, but never mentioned at the second.

The Subcommittee in early June had asked the Navy to take a new and thorough look at the possibility of using artificial or floating islands as targets, and of using Navy ships for the rake (spotting) stations to score its gunnery/bombing exercises.

An "island builder" offered—by telegram sent at Bennett's suggestion late last week to Navy Secretary John Chafee—to make a feasibility study for an artificial island in the general vicinity of Roosevelt Roads with the necessary mass and contours.

At one point in the 17 July hearing, Grimes made Culebra sound so important as the keystone of the Atlantic Fleet Weapons Range that if it didn't exist it would have to be invented.

But the possibility of "inventing" artificial islands or floating targets and rake stations simply wasn't addressed.

In closing the hearings, Bennett castigated the press, calling much of what has been written about Culebra "distressing" and "inaccurate." Bennett has said he feels the charges against the Navy were not substantiated by what he personally experienced on his visit to Culebra, when the Navy provided him with an opportunity to observe the effects of their firings.

But Commissioner Cordova summed up *his* feelings on that subject in one last statement before adjournment: "I'm not at all satisfied that on our own short trip to Culebra we received any idea of what may go on there when Culebra is being used as a weapons range. . . . I am far from persuaded from what little we saw and heard that the complaints are necessarily unfounded. I fear that we just didn't have the opportunity to hear what actually goes on."

Dimming the Lights on Culebra

It's time to dim the lights for a while and let everyone get his bearings on Culebra.

The islanders have become targets, not just for Navy ordnance, but for publicity and politicians as well. Regrettably, the Culebra issue is now being exploited by radical factions in the Independista party, who are trying to make political hay at the expense of 726 very sincere, very concerned Culebra citizens. Thus, the glare of the spotlight has cast shadows across the island and its people.

Some Navy officials, on the other hand, have been a trifle cavalier where the Culebrans are concerned. There's a hint of evidence that is uncomfortably reminiscent of the stereotype western badman shooting at the Apache's feet to make him "dance." The Navy keeps offering assurances that the Culebrans are in no real danger, pointing to a 34-year safety record that is, undeniably, a source of pride—under the circumstances. But a handful of errant shots, recent near-tragic incidents—and years of behind-the-scenes Navy negotiations to resettle the islanders, just now coming to light—have sown seeds of fear and mistrust that can't be unburied with platitudes and quick-fix community relations programs.

We don't know how the House Armed Services Real Estate Subcommittee will report out on the Navy's request for a new, 2,350-acre safety easement on Culebra. The Navy says the island is essential to Atlantic fleet readiness. It may well be. But relations between the Commonwealth of Puerto Rico and the U.S. would benefit greatly if the Navy's Culebra experts would come up with something more substantial than the generalities and platitudes offered to date—especially when there are so many specific questions, many of them asked by the Subcommittee itself, that the experts haven't bothered to answer.

America has a remarkable history of "making do" when it had to, of improvising, of innovating new alternatives—and of still coming up to the mark when it mattered. Much of that history was made by the Navy. We're sorry to see some of its Culebra experts soil the record in the name of expediency.

If you've seen the movie "Z," there's something about it reminiscent of the Culebra issue. Two weeks ago, hopes for an objective review soared when Puerto Rico's Governor Luis Ferre announced that he'd called Defense Secretary Laird. Ferre said Secretary Laird had ordered a new Navy look, to be completed in one week. So we asked . . .

Who headed the review? From what we can learn, it was SecNav Special Assistant Joseph A. Grimes, Jr.—the Navy "expert" who's insisted from the outset that there's little more to the Culebran issue than a bunch of left-leaning Independistas, a few land speculators, and a couple of misguided journalists. The expert who's answered some of the best questions asked by the House Armed Services Subcommittee either by obfuscating or just plain ignoring them.

The Navy is big enough, smart enough to face the issues squarely instead of appealing to authority. But talking with some of the Navy's experts on Culebra is like standing underneath a waterfall yelling "Stop!" Perhaps what the Navy needs is someone in charge of the Culebra issue who understands a little better what the United States Navy is all about. Before the shadows get darker.

It's easy to get "involved." And The JOURNAL has become involved in the Culebra issue far beyond what we could have imagined when we first visited the island nine weeks (and nine Commentaries) ago. While it's hard to recognize the point at which one's involvement does more harm than good, we can't escape the feeling that point has been reached. So we're closing down the Culebra Commentaries—until there's something more constructive to report.—Benjamin F. Schemmer.

Navy's Culebra Plan Passes House Panel, May Face Tough Senate Fight

The Navy has won House Armed Services Real Estate Subcommittee approval of its request for new safety-zone easements on Culebra, but it faced some sharp questioning from Senator Henry M. Jackson (D-Wash) at Journal presstime.

HASC Chairman L. Mendel Rivers (D-SC) said, in a press release accompanying the Subcommittee report, that he "fully supported" the panel's recommendations. Rivers added, "The news media has distorted the facts about the Navy's training in the area." He did not elaborate on the charge. He also commended the Subcommittee, headed by Representative Charles E. Bennett (D-Fla), for "getting all the facts in an impartial manner."

The panel's unanimous five-page report concludes that "the Culebra complex is irreplaceable and definitely required for our national defense."

Representative Samuel S. Stratton (D-NY), however, said he supported the subcommittee's findings "somewhat reluctantly." In 2¼ pages of "Additional Views" filed with the report, Stratton said he was "not convinced that the Navy or the Department of Defense have fully explored every possible alternative." He urged that the search for an alternative target complex be continued "at a stepped-up tempo."

At Journal presstime, Senator Jackson was set to meet with Navy Secretary John Chafee and other officials to go into the Culebra issue in detail.

And Senator Charles E. Goodell (R-NY) was ready to introduce—perhaps with very influential co-sponsorship—an amendment to the defense procurement authorization bill which would not only block the Navy's new easement request but also bar continued gunnery operations on the island's northwest peninsula.

"THE CULEBRA AMENDMENT"

SEC. 507. "None of the funds authorized to be appropriated by this Act or by any other law shall be used for research, development, test, evaluation, personnel training exercises, or the procurement of weapons or other supplies by any military department if such activities include the naval shelling or air bombardment of the island of Culebra (located off the east coast of the Commonwealth of Puerto Rico), of any of the keys adjacent to such island, or of any waters within three nautical miles of such island."

Meanwhile, a member of Senator Jackson's staff told The Journal that the "hold" placed by Senate Armed Services Committee Chairman John C. Stennis (D-Miss) on the Navy's proposal—requested by both Senator Jackson and Senator Edward M. Brooke (R-Mass)—still obtains.

Regardless of the outcome of the Chafee-Jackson colloquy, Senator Goodell intends to offer his amendment to bar the Navy from using Culebra as a target.

One source in the Senate, who has a reputation for his moderate views, told The Journal, "The Navy doesn't know what it's up against on the Culebra issue." He said the amendment stands "a good chance of passing."

Senators rumored to be willing to co-sponsor or back the Goodell amendment include Senator Jackson himself and Senators Brooke, Hugh Scott (R-Pa), and John Tower (R-Tex), another high-ranking member of the Senate Armed Services Committee.

Senator Tower's office told The Journal, however, that the Texas Senator would merely "follow the lead" of Senator Jackson in the matter. If not satisfied with the results of his interrogation of Navy officials, Senator Jackson is reported to be prepared to support the Goodell amendment.

Another Senator, Jacob Javits (R-NY), has supported the Culebrans' case on the Senate floor. Senator Javits is said to have talked with President Nixon on the Culebra issue and brought to the Senate's attention a letter from New York Governor Nelson Rockefeller to SecDef Melvin Laird backing the Culebrans' position.

Even if it passes the Senate, however, the Culebra amendment faces stiff opposition from House conferees in the battle over the final shape of the procurement authorization bill. The House conferees can be expected to back the House Armed Services' panel's recommendation to the hilt.

Here are key excerpts from the Bennett Subcommittee report:

In order to obtain a realistic perspective of the operations conducted on Culebra, and its effect on the residents, the chairman and several members of this subcommittee visted Puerto Rico, Vieques, and Culebra during the period June 26 through 28, 1970.

The trip to Culebra was a revealing one from many standpoints.

1. The committee found that the inconvenience of range firings noise to the citizens of Culebra was, in fact, infinitesimally small, and that ordinary conversation would prevent it from being heard in the town of Dewey.

2. The Navy proposal will improve the present safety of Culebrans without requiring any of them to move.

3. There are, in fact, no rare Puerto Rican parrots on the island as was alleged, and possibly there never have been, but if any rare wildlife can be found there in the future its chances of survival will be improved, not harmed by the Naval proposal to limit human habitation in certain areas.

4. Contrary to testimony received during the open hearing: there are no bombs dropped on the island of Culebra *and no napalm is dropped on Culebra or any other part of the Atlantic Fleet Weapons Range;* artillery shells fired at the northwest peninsula are scarcely audible in the town of Dewey; and it can positively be stated that none of the firings which took place during the subcommittee's visit caused the school building or any other building in the town of Dewey to tremble.

5. Many areas in mainland United States suffer much greater inconvenience and discomfort from military requirements in their areas when contrasted with the very mild inconveniences experienced on Culebra.

6. The Navy has not done everything it should do to improve its relations with the people of Culebra.

During this visit, the members observed naval operations and had the opportunity to talk to many residents. During our observation of aircraft bombing from the Navy observation post, it was possible to see some of the impacts, but they were not audible even from the observation post and they were certainly not audible in the more distant town of Dewey. It was also learned that Navy aircraft on bombing and strafing maneuvers do not use, and do not plan to use, flight patterns which are directly over the island of Culebra.

While observing ship-to-shore bombardment, the subcommittee could find no evidence that the operations endangered the lives of the residents or that their health and environment would suffer as a result of present or planned Navy operations. As previously indicated, low conversation totally obscured the noise of gunfire.

This subcommittee believes that many of the complaints testified about during the hearings are caused by a lack of communication between the Navy and the residents of Culebra. We believe the Navy's failure to be sufficiently mindful of the feelings

of the people of Culebra brought about the majority of the complaints.

At the request of the subcommittee during its visit, the Navy recreated the mortar firing incident. The subcommittee found that although this incident did not actually endanger anyone, the circumstances of the unannounced firing by the Navy was inexcusable. Even though the range was not in operation, it would have been a simple matter for someone from the observation post to drive down to the beach and explain to the bathers what was about to occur, and that there was no cause for alarm. If someone had made this simple gesture, probably not a word would ever have been said about this firing. In this regard, we insist that the Navy publish firmer firing schedules and that these schedules be given wider publicity through whatever means are necessary to alert all citizens of Culebra.

PRESS CHARGES WITHOUT FOUNDATION

The Navy convinced the subcommittee that it has made an extensive search and has found no site which could be made available to the Navy to substitute for Culebra in the essential defense program of the Atlantic Fleet Weapons Range. There have been charges in the press that the Navy cares more for its weapons than for human beings. This subcommittee does not consider this to be the case. The reason for training is to develop a force to protect the way of life and the very lives of all Americans. Further, realistic training gives the fighting men of this country a better chance to survive in a combat environment. The safety zones the Navy desires, and its safety procedures, are for the very purpose of protecting the lives and property of the people on Culebra. Therefore, this subcommittee feels that the charges made by some of the news media are without foundation in fact. . . .

In addition, the Subcommittee made several very specific recommendations for improving the safety factors, and for improving relations between the Navy and the islanders.

In his "Additional Views," Representative Stratton offered the following remarks:

"Neither the Navy nor this subcommittee should ever allow ourselves to be placed, or appear to be placed, in the position of putting target practice ahead of people. Yet in my opinion the subcommittee's report skirts perilously close to that position. . . . I concur with the subcommittee in its specific actions, but am strongly of the opinion that, in the light of all the circumstances, these actions should be regarded as strictly temporary and provisional, and capable of being altered, vacated, or amended at any time that a more suitable solution to the Navy's obviously critical operational problems can be found. . . ."

Puerto Rico's Resident Commissioner Jorge Cordova, who sat with the House panel throughout its hearings but who has no vote in Congress, told The Journal that he had been expecting a report favorable to the Navy. Cordova said he now has no objections to the Navy acquiring its non-habitation easements, but only because this would be a good way of keeping the island's northeast peninsula out of the hands of land speculators and eventually converting it into a national park.

Meanwhile, in Puerto Rico, Governor Luis Ferre met with former Governor Munoz—who, for 28 years until 1964, earned his people's esteem as the "George Washington" of Puerto Rico—on the Culebra issue. In an unprecedented bipartisan statement, both said the Navy must abandon Culebra as a target range, unless such use is necessary "in a fundamental sense to the nation's security."

Munoz said he was convinced the security of the United States did not require the use of Culebra as a target range.

Ferre has appointed Robert Kilmarx of the Georgetown Center for Strategic Studies as his Special Consultant on Defense Matters, and has asked Kilmarx to report back to him within the next week on the Culebra issue.

CULEBRA COMPROMISE SHAPING UP ON HILL?

The shape of the final solution to the Culebra Controversy may already have emerged in two key documents whose issuance has now set the stage for what could be the last act in the Culebran drama.

One of the two documents is the eagerly awaited first Senate floor statement (reprinted in full in the adjoining box) of Senator Henry M. Jackson (D-Wash), whose Armed Services Subcommittee on Military Construction has been holding closed-door hearings with Navy officials on present and proposed Navy activities on Culebra.

The other key document, unveiled about a week before the Jackson announcement is an analysis of "National Security Issues and U.S. Naval Training" which Puerto Rican Commonwealth Governor Luis A. Ferre had ordered prepared by Dr. Robert Kilmarx, a defense expert working for a private think tank (Georgetown University's Center for Strategic Studies) headed by a former CNO, Admiral Arleigh Burke.

Senator Jackson directed the Navy to supply by 2 September (the Navy said the deadline would be met) answers to several questions left unresolved as a result of the Jackson/Navy hearings. Jackson wanted a designation of alternative areas for conducting the target training now done on Culebra, as well as "contingency plans" should present activities there be curtailed.

Based on the assumption that the Navy can find a viable alternative, Senator Jackson also requested the Department of the Interior to make a finding on the suitability of the federal (Navy) lands on Culebra as a national recreation area.

Like the Jackson statement, the Kilmarx study also appeared to be favorable for the Culebrans' cause, but with significant strings attached.

It concludes that while the Navy can demonstrate that the training effectiveness and efficiency of the Atlantic Fleet would be seriously degraded if its use of Culebra and offshore islets were abruptly cut off without adequate replacement, it "cannot convincingly demonstrate" that its use of Culebra is vital to the national existence of the U.S. or indispensable to U.S. security.

Therefore, Kilmarx suggested the Navy undertake a five-year phased withdrawal, move its target sites to other locations, and start work on building artificial islands which would provide target practice superior to that afforded by Culebra.

Dr. Kilmarx's "security" conclusion was based primarily on the types of weapons systems used in training at and near Culebra. They are "not designed," he pointed out, "to counter the primary Soviet strategic threat, including submarine launched ballistic missiles. It is mainly this threat, plus Soviet ICBMs and long range bombers, that could risk the national existence of the United States."

U.S. political security in the Caribbean and in Latin America might be impaired if the Culebra issue is not resolved—in time—more favorable to the Culebrans.

While the restrictions endured by the islanders are not unprecedented in U.S. history, Kilmarx noted, the special circumstances surrounding Culebra give it special political significance as a "bell weather of contemporary U.S. attitudes concerning key issues of national priority."

But the Kilmarx plan is a "something for everybody" package, designed to please the Navy as well as the Culebrans.

Dr. Kilmarx declared that man can build the Navy a better target area than God gave it in the island of Culebra, even if the Navy were to acquire the entire island for its purposes.

"The fact remains," he says, "that the islands of Culebra and Culebrita are far from optimally developed and configured for advanced Navy training activities."

Kilmarx observed that DoD action in cutting back naval readiness training "argues against modest adjustments in range facilities on or near a particular natural island in the Atlantic Fleet Weapons Range, e.g. Culebra, and more ample funding to permit the selection and development of alternative facilities which are more suitable to advanced training requirements of a modern navy of limited size. The constraints already accepted by the Navy concerning Culebra further indicate the desirability of selecting an alternative site, preferably one constructed in the test range area, which is optimized to meet the growing needs of future forces."

Puerto Rican Secretary of State Fernando Chardon, speaking for Governor Ferre in a Washington press conference held to release the Kilmarx study, said the Governor accepted the conclusion of the report that the Navy can and should cease its firing activities on Culebra but that he was still considering the specific recommendations.

SENATE MINORITY LEADER BACKS REPORT

Republican Senator Hugh Scott (Pa.), who, as Senate Minority Leader, is often the Nixon Administration spokesman in the Senate, said he supported the report's conclusion that the Navy must leave Culebra. (Whether he speaks for the Administration on this matter is not known.)

In very positive terms, Scott said: "It appears that the ultimate resolution of this matter will be the end of naval use of Culebra as a target for shelling and bombardment."

Scott said the Kilmarx report provides "independenct advice," and its conclusions and recommendations are "qualified as tentative indicating that future developments could alter them."

The time schedule for this discontinuance, Scott said, "will have to be worked out between the island and the Navy with consideration given to the problems and difficulties of both parties."

In a closely-reasoned but somewhat nitpicking 11-page critique of the Kilmarx report, Richard Copaken—the Washington attorney with the firm of Covington & Burling who represents the Culebrans here—strongly suggested that in spots, the report "reads very much like a Navy apology" and refused to concede Kilmarx's authorship of it. Copaken said the report was "signed by" Kilmarx.

Copaken noted that Kilmarx had provided for an extension beyond the five-year period if the national security were demonstrated. He calls this a "loophole" that "can be relied on to undermine even the wholly unrealistic five-year phase out period."

Meanwhile, an amendment calling for a halt to Navy shelling of Culebra continues to pick up impressive support in the Senate.

Sponsored by Representative Charles E. Goodell (R-NY), it was originally intended as an amendment to the procurement authorization bill, but Goodell held off calling it up pending the results of the Jackson hearings.

His office told The Journal the measure is now scheduled to be offered as an amendment to the military construction authorization bill, but said this would depend on the outcome of the Navy's response to Senator Jackson.

At least 48 Senators are said to back the amendment or to have indicated they lean toward its support.

HOLDING COMPANY AMENDMENT SHOULD BE STRICKEN FROM HOUSING BILL

Mr. METCALF. Mr. President, I object to the inclusion in S. 4368, the Housing and Urban Development Act of 1970, of a provision on which no testimony whatsoever has been taken. I am advised by the Banking and Currency Committee staff that the bill includes the provisions of S. 4272, a bill desired by utility holding companies. They want that bill enacted in order to subvert three recent decisions of the Securities and Exchange Commission, which has held that they must divest themselves of housing subsidiaries or stay out of the housing field.

This is not the first time that the Banking and Currency Committee has quietly, without hearings, and without justification acceded to the wishes of the utility industry. The same thing happened when Congress, after some 7 years of hearings and debate, passed the Truth-in-Lending Act. A member of the conference committee proposed, in conference, that utilities be excluded from the act, although they were included in the proposed act in both the Senate and House versions of the bill and in earlier versions of the bill in previous years. The amendment was accepted and utilities were excluded from the Truth-in-Lending Act, except as regards sale of appliances, a very minor aspect of utility sales. As a consequence, many utilities continue to levy finance charges at the rate of 100 percent or more on an annual basis, as I pointed out in introducing S. 3018, on behalf of the distinguished senior Senator from Pennsylvania (Mr. SCOTT) and myself, last year.

There are two basic reasons for objecting to the amendment sought this year by public utility holding companies. One reason is the cost to the taxpayer. The utilities which have sponsored housing admit to earnings of 20 percent or more on their equity, as a result of the tax-loss features of the program. Property of the utility's housing subsidiary is depreciated in its entirety over a 10-year period, producing a tax loss for consolidation with the parent company's return.

I believe that before Congress acts in this matter it should know whether increasing utility profit and decreasing utility tax collection is the economical way to assist housing. We should know the real cost of such housing and tax assistance to the taxpayer-ratepayer homeowner.

Second, there are serious antitrust aspects involved here, as noted by the SEC. Utilities are rapidly becoming conglomerates. Congress established the Securities and Exchange Commission and charged it with administering a portion of the Public Utility Holding Company Act. The SEC has ruled, after hearings, against the utilities. Now a committee of the Congress, without hearings, moves to reverse the SEC.

Mr. President, I resent such procedures. They do not become this body. If the holding company amendment has merit it can be considered under normal hearing and review processes during the next Congress.

Mr. President, I serve notice now that I intend to move to strike the holding company amendment from the bill. I ask unanimous consent to have printed in the RECORD several items which bear on the issue: My testimony before the Senate Antitrust Subcommittee on June 11; an article entitled "Duke Rate Hike Request Raises Major Questions," written by Allan Sloan, and published in the July 19 issue of the Charlotte, N.C., Observer; and the pertinent SEC decisions.

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

TESTIMONY OF SENATOR LEE METCALF

Mr. Chairman, we had the seventeen year locust, as we do now, the year I came to Congress in 1953. Also, that year, this Subcommittee began a brief but penetrating look at the electric power industry, thanks to Senators Kefauver and Langer.

During the ensuing seventeen years this and other Congressional committees have been, insofar as antitrust activities of electric utilities are concerned, as dormant as the seventeen-year locust.

I am glad that, under your leadership, Mr. Chairman, and that of the senior Senator from Vermont, a subcommittee, locust-like, has surfaced.

I hope that you can change the cycle and stay above ground until 1987 at least. Congressional review of utility anitrust policy should be continuous.

Electric power is by far the nation's largest industry. It is growing rapidly because it has a monopoly on an essential, superior product.

The electric utilities took the lighting business away from the gas utilities half a century ago. They appear to be on their way toward domination of the heating area as well. They are going into the real estate and housing business in a big way. They are intertwined with the banking and insurance industries and have extraordinary force in politics, the educational system and the press.

Decisions within the industry are made by relatively few persons. They are not subject to the democratic election process. Their powers are used for purposes unforeseen by legislators who granted the utilities extraordinary privilege.

How can this mushrooming monopoly be contained? We have here a serious and substantial question of public policy.

DISCLOSURE

I would emphasize at the outset that more adequate disclosure of utility matters is an essential prelude to effective antitrust enforcement. Disclosure itself will diminish the need for court action.

If utility advertisements are to be believed, the industry itself wishes to live in a goldfish bowl. However, the regulatory commissions have been spectacularly unsuccessful in obtaining information from utilities as to who owns them, who works for them, the details of their income and expenditures, and policy in certain areas. Thus both antitrust enforcement and regulation require specific statutory reporting requirements of utilities.

Present reporting requirements regarding utility ownership, employment and contractual arrangements are a sham. Street names hide beneficial ownership. Payments for varied professional and political services are hidden. Terms of pooling agreements among utilities are unavailable. Interlocks among directors are unreported, as are payola expenditures to builders who are coerced by electric utilities to lock out competitive gas or oil heat companies. Increasingly, utilities are becoming conglomerates, with subsidiary activities, especially in housing and real estate, in which they compete with small businesses which do not have the immense resources of utilities.

The hearing record on S. 607, the Utility Consumers' Counsel bill, and my files contain the data which support the above summary. Your staff is welcome to use this material to supplement what it has already gathered through the previous hearings and staff investigation.

INTER-FUEL COMPETITION

Another fundamental of sound antitrust policy in this field, in addition to corporate disclosure, is encouragement of competition among fuels and different types of suppliers.

Oil companies have picked up the major coal companies already.

Large utilities such as Commonwealth Edison are leasing coal reserves near and crucially important to small municipal utilities, such as the one in Springfield, Illinois.

The one traditional source of Federally-generated electricity, hydropower, is a steadily decreasing component of our total generation.

The Administration has proposed the sale of the Federal government's uranium enrichment plants to private industry.

Seventy eight of the major electric utilities are combination companies, with a monopoly on both electricity and gas in their area. These seventy eight companies, as your Subcommittee heard last month from Staff Director David Freeman of the Office of Science and Technology, account for forty three per cent of the total sales of electric power by private companies.

The right to choose—one of the basic consumer rights enunciated by President Kennedy—is a sharply diminished right for utility consumers. As their options in shopping for utility service dwindles, the control of energy accumulates in fewer and fewer hands, farther and farther removed from the ineffectual regulatory commissions and the public, whose only function is to pay the bills emitting from distant computers.

I hope that this Subcommittee will lay out for all to see the stark facts on galloping oligopoly which has overtaken the energy industry and closely related institutions. I trust that the Congress will head off the Administration's scheme to sell off the uranium enrichment plants. Government itself and its advisory committees are so laden with agents of the energy combine that public control of a few parts of the energy system is by no means assured. But the beachhead must be held.

Congress has done poorly for the people on the issue of nuclear power. We appropriated more than two billion dollars to make nuclear power possible. We wrote an extraordinarily weak preference clause—the utilities simply circumvent it. Now they are asking for more money to deal with the environmental problems relating to nuclear power.

The Congress did somewhat better, I believe, a half century ago.

Congress attempted, in the Federal Water Power Act of Nineteen Twenty, to set long-range national policy regarding the production of hydroelectricity. Many of the licenses granted under that act were for a period of fifty years. They are beginning to expire now.

We should be devoting more time and study than we are to the policy implications of hydroelectric license renewal. There are instances where licenses should not, in my opinion, be renewed for private companies

which now have licenses. State, municipal and cooperative systems, and in at least one instance with which I am familiar, an Indian tribe could well become the licensee.

The antitrust implications of hydroelectric license renewals need the attention of this Subcommittee, Mr. Chairman, and that of the Anti-Trust Division of the Justice Department. The Federal Power Commission celebrated its Golden Anniversary a few days ago by welcoming to its platform officials from utilities which are defendants in antitrust actions; I doubt the FPC will be of much help on this important antitrust issue.

In an attempt to obtain a degree of interfuel competition I shall introduce, next week, a bill to require divestiture of combination gas-electric utilities. I hope that reports on the bill from the various agencies can be obtained on it this year, and that this subcommittee will hold hearings on it next year. I believe that passage of this bill would provide significant benefits to customers now served by combination companies and that the companies, when separated, will discover that they can prosper under the American free enterprise competitive system.

I believe that passage of such legislation will also inject another element of competition into the energy field, in that it will help the technology of total energy, by which independent power plants provide electricity, heat and cooling for shopping centers, plants, commercial buildings and public facilities. Total energy systems sometimes find it difficult or extremely costly to purchase the gas they need from combination utilities.

COMMON CARRIER CONCEPT

My third point, Mr. Chairman, deals with transmission of power. Whoever controls the vital transmission lines controls the whole system. It is the interstate highway of the electric industry, except that the back-up for the big transmission lines is not as good as our primary and secondary road system.

To appreciate the analogy, visualize a big detective—let's say he's a Pinkerton man—and a Minnesota farmer at an interstate cloverleaf. The detective says:

"Sorry, buster, you can't get on that highway. It belongs to me and my friends. Some of them might be wanting to drive through and we don't want to crowd up the road."

Now were that to actually happen there would probably be some business at the cloverleaf for both the State Highway Patrol and the ambulance. But that is exactly what is happening in the power business, today, in America.

Some large private power systems are refusing to let small city-owned and consumer-owned power systems onto the transmission network, despite their willingness to pay tolls or become paying partners in the system. That is what the Elbow Lake, Minnesota case is all about. That is what the fight is about in New England. And that is part of the fight in my State, where the Department of Interior is considering signing a wheeling contract which would give Montana Power the right to provide service deep inside the territory of rural electric cooperatives, to decide which cooperatives should be served or not served by the line, and to build additional unspecified transmission facilities, sending the bill for part of them to the Federal government.

I believe that members of the Judiciary Committee will be especially interested in this proposed contract's provision for adjudication of disputes, if any, between the Department of Interior and the Montana Power Company. Ordinarily an impartial third party is called in in such instances. The arbitration section of this contract, however, would have the third party named by an official of another investor-owned utility, the Southern California Edison Company.

That arrangement would simply insure that the government would lose its case to the two utility representatives on the Board of Arbitration.

The customers whose service would be decided by that partial board would hardly be worse off than the Minnesota town which has been denied access to the transmission system by Otter Tail Power. In the first place, there is no electric utility regulatory commission in Minnesota. If there were one, and it were like most other State commissions, it would have no authority to require a hook-up.

So Elbow Lake came to Washington and the Federal Power Commission. The FPC if fifty years old—it dates back to nineteen twenty—that is three generations of seventeen year locusts ago. And only now are the FPC and the Justice Department attempting to determine, after considerable prodding, whether the law might require the big power company with the transmission facilities to sell to little systems which it would rather starve out and buy than serve.

Mr. Chairman, I submit that such arrangements are inadequate. We can do better, and we should.

First, Congress should repeal or modify the Keating amendment. That is the proviso, carried in the Interior Department Appropriation every year since the Korean War, which prohibits the Bureau of Reclamation from using appropriated funds to construct transmission facilities in areas covered by wheeling agreements.

It is argued by its proponents that the Keating amendment saves money by preventing the construction of duplicating lines. Opponents counter that the amendment has resulted in millions of dollars of excessive wheeling in charges. Cost comparisons are difficult. The Budget states Federal expenditures for Federal transmission lines. However, you cannot find in those Budget compendiums the payments to utilities for wheeling. The utilities know how to get even Uncle Sam to use their own fuzzy accounting system.

I deal today not with costs, but with control. The Keating amendment permits private utilities, rather than the Federal government, to decide the location and size of transmission lines from Federal dams. The amendment prohibits public bodies from exercising their statutory preference in purchase of power from Federal dams.

The Keating amendment has locked inefficient, insufficient and costly transmission lines into our tenuously-connected grid, while increasing the monopoly of the private sector in the vital transmission function. I urge this Subcommittee to do all it can to obtain repeal or modification of the amendment.

Beyond that, I earnestly hope this Subcommittee will make recommendations regarding the organizational structure of the transmission function.

There are three possible organizations of power transmission which I commend to your subcommittee for study.

One, a publicly owned or publicly controlled basic grid system developed by agencies of the Federal government, offering wheeling services to all power producers and bulk purchasers.

Two, separation of the ownership of bulk transmission facilities from any control or interest of companies engaged in the production or sale of electric power, or,

Three, development of mixed public-private corporations to build and operate regional transmission systems, with capital participation and service guarantees in proportion to each utility's needs, but with the right of participation of all systems guaranteed by law.

Three years ago I began calling to the attention of the Justice Department situations in the electric power industry which in my opinion warranted antitrust action. I said then that, "The goal of power transmission in America today, whether reached through negotiation, regulation, or legislation, must be to permit all electricity, whether produced by Reddy Kilowatt, Uncle Sam, Willie Wired Hand or the city light plant, access for the same fare onto the transmission highways." I reiterate now the need for incorporation of this common carrier concept into national power policy.

UTILITY CONGLOMERATES

Fourth, I would like to deal with the changing nature of utilities and their entry into areas far afield from that for which they were franchised. I do not plan to discuss at this time their role in education, the political process and the press, but rather their relationship with other businesses.

It is important to remember that, in the economic order, utility corporations perch high above the field where risk enterprises grub for the deflated dollar. Utility corporations have the essential characteristics of states, without being burdened by the troublesome trappings of democracy. The utilities have borders, the right of eminent domain, the power to levy tax-like rates. They are the sole source of an essential product, yet their advertising budget dwarfs the outlay of State promotion and economic development departments.

The quasi-governmental utility apparatus brings together the financial and business muscle throughout the territory served by the utility. The directors and retainers come from the banking community, other industries, and the leading law firms. Often they include legislators as well. Through interlocking directorates and good will purchased through contributions and regular substantial donations to Chambers of Commerce and other organizations—the cost of which is invariably passed on to the utility consumers—this hierarchy is ideally suited for business ventures beyond the scope of the original franchise, which, if still existing, are difficult to find.

In April 1969 the Securities and Exchange Commission authorized utilities to enter the housing business over the objection of Chairman Budge. Operating utilities have amended their charters to permit their entry into fields totally unrelated to utilities.

Philadelphia Electric, for example, amended its charter to allow itself to engage in "manufacturing, processing, owning, using and dealing in personal property of every class and description" including "acquiring, owning, using and disposing of real property of every nature whatsoever." Gas utilities are entering the field in a big way too. Pacific Lighting directors have approved plans for the nineteen million dollar acquisition of two real estate development companies in California. UGI Corporation has agreed conditionally to acquire all the capital stock of five Pennsylvania real estate development companies.

More than half of this nation's utilities are now in or considering entry into the housing and real estate business according to Electrical World.

Mr. Chairman, everybody is for housing. But I raise two questions which I hope can be answered by your investigation.

How much does it cost the public to build housing through utilities?

What is the antitrust effect of the utilities' entry into this field?

Utilities have gone into housing because they can make even more money in it than they can selling utility services. They make more in housing than housing corporations do. Niagara Mohawk Power claims its hous-

ing will produce an annual average return on equity over a ten-year period in excess of twenty percent.

This high return of the utility is at the expense of the Federal taxpayer. It's the old tax loss game. Property of the utility's housing subsidiary is depreciated in its entirety over a ten year period, producing a tax loss for consolidation with the parent company's return. At the end of the depreciation period the property can be sold at cost or even given away.

Meanwhile, the utility has pocketed its high earnings, locked out competing businesses such as oil heat from its subsidiary's houses and provided fodder for reams of press releases about its compelling sense of social concern.

I tend to agree with the Michigan utility executive who said that building low and moderate income housing under existing Federal programs seems to be particularly suited to utilities. I hope that someone can evaluate this utility-suited program's effect on taxpayers.

Mr. Chairman, I submit for the record an article by a utility executive, in Public Utilities Fortnightly, on how utilities can get richer quicker in the housing business.

I also have, for the record, correspondence relating to the land development practices of South Carolina Electric & Gas. There is a special antitrust twist to this one. The utility acquires large tracts of land for residential and industrial development, then refuses to give the Mid Carolina Electric Cooperative the right of way it needs over part of the land.

I would also like to submit for the record, whatever follow-up action the staff deems advisable, information regarding Franklin Real Estate Company. It is a Pennsylvania corporation wholly owned by Ohio Power, which is a subsidiary of the American Electric Power, the largest utility holding company in the country. The president of Franklin Real Estate is Donald C. Cook, who is also president of American Electric Power and other associated firms.

In this case building contractors were induced by Mr. Cook's companies to agree not to build any house heated by anything except electricity. I shall include with this insertion, with your permission, Mr. Chairman, the decision of Judge Oren R. Lewis of the U.S. District Court in Eastern Virginia who found Virginia Electric and Power guilty of giving kickbacks to builders whom they coerced into locking out the competition.

The utilities are moving in not only on housing contractors but on housing service businesses as well. As the president of one housing development corporation wrote me just a few days ago, a public utility does not need his type of service because:

"They themselves are providing such services. It was explained that this company had qualified as an FHA consultant and was not only developing its own housing, but apparently was providing consultancy services in the field of housing for other sponsors of such housing projects."

There are three other items that I submit for the record for what value they might be in the follow-up work of this subcommittee. The first is the minutes of meetings held by the North Central Electric Association, in which key executives of the member electric utilities in this Midwestern group tell each other how to arrange the sell-out of municipal power systems.

The second is an internal report circulated among New England electric utilities, telling how they would utilize the press, the United Mine Workers, the International Brotherhood of Electrical Workers, General Electric, Westinghouse and various members of Congress to stop construction of Dickey-Lincoln Dam. And they did.

The final item relates to a recent decision by the Alabama Public Service Commission in the Alabama Power case. The commission permitted some four million dollars in bank deposits to be included in Alabama Power's rate base. When an item is permitted in the rate base the customers pay a percentage on it. So Alabama Power's customers are paying a percentage on this four million dollars, instead of drawing interest on it.

I am including the affiliations of Alabama Power's board of directors, most of them either bankers or lawyers who represent banks. I hope the subcommittee will be able to determine whether the banks represented on the board of directors are getting their proper share of this windfall.

I would refer this matter to the chairman of the Alabama Public Service Commission, Eugene "Bull" Connor, the former Birmingham Commission of Public Safety, but he voted against enforcement of law and order among bankers and utility officials, so he might not be too responsive to mere Senatorial inquiry.

I have no objection at all if you wish to share any of these materials with the Attorney General. In fact, I hope you will.

He should lift his eyes from the street to the executive suite and begin at last to crack down on the white collar crime that pervades our troubled land.

[From the Charlotte Observer, July 19, 1970]

PUBLIC POLICY IN CAROLINAS: DUKE RATE HIKE REQUEST RAISES MAJOR QUESTIONS

(By Allan Sloan)

Duke Power Co.'s request for the biggest rate increase in its history will shortly pose two major questions of public policy in North Carolina and South Carolina.

1. Should a public utility, backed by a government monopoly to sell electricity, engage in the land development business through a wholly-owned subsidiary?

2. If so, should the subsidiary's profits or losses be included with revenue from electricity to lower or increase electric rates, or should they be kept separate for the benefit or loss of Duke's stockholders.

Those questions will be weighed by the S. C. Public Service Commission in hearings beginning Tuesday, and by the N. C. Utilities Commission, which begins its own hearing Aug. 25.

Duke is asking for an 18 per cent increase which, it calculates, will cost each of its customers an average of $2.61 a month. Duke's commercial customers—who number over 100,000—will be affected also.

Duke claims that it needs the additional revenue because unexpected high rises in fuel prices have added millions of dollars to its costs, and because current high interest rates will aid substantially to the cost of borrowing the $1.5 billion it needs in the next five years to double its generating capacity and accommodate growth in the Piedmont Crescent.

In recognition of the rising price of coal—which Duke uses in steam generating plants—the company has been awarded an "emergency" increase of 4.2 per cent in both states. That increase has been in effect since June.

Duke's request for the balance of the increase comes at a time when it has branched out into land development with potential profits of millions of dollars to Duke stockholders—and in the face of a U.S. Securities & Exchange Commission order to a Michigan utility holding company to get out of the development business.

The SEC ruling is based on a federal law governing utility holding companies. Legally, Duke Power Co. is not a holding company, although it has two wholly owned subsidiaries. Thus, it is presumably exempt from the SEC ruling.

Other non-holding company utility firms elsewhere in the nation have branched out into similar non-utility operations.

But the Duke case might become a test of whether the SEC decision of June 23 shall apply also to utility companies that are not defined legally as holding companies.

Another question that may arise during the Duke rate hearings is whether it is proper for Duke—which says it needs a rate increase to improve its borrowing power—to lend a wholly-owned subsidiary millions of dollars it borrowed in its own name, and for the subsidiary to use the money to engage in activities that will benefit Duke stockholders, but which will not help the ratepayers at all.

Through its subsidiary, the Crescent Land & Timber Corp., Duke has spent millions of dollars and has established itself as a dominant force in the real estate development field in the Carolinas.

In the past four years, Crescent has acquired hundreds of thousands of acres of land, forged an alliance with the Ervin Co., one of the largest builders in the Southeast, and has entered other projects which promise to be profitable.

Created four years ago, Crescent is one of the biggest landholders in the Carolinas, with about 300,000 acres of former Duke Power land, 130,000 more acres in the Keeowaway-Toxaway area in South Carolina and hundreds of acres of residential real estate it has been buying since 1966.

At current market prices the land has a probable value of around $100 million, although it was transferred from Duke to Crescent at Duke's original purchase price of about $24 million because of legal restraint's on Duke's dealings with wholly owned subsidiaries.

Duke also borrowed, and turned over to Crescent, at cost, money to purchase additional land from the Ervin Co.

Crescent has acquired about 750 acres of the 2,300 acres the Ervin Co. once held for speculation in Mecklenburg County, and has sold considerable parts of it back to Ervin at cost plus a nominal profit.

Two apartment complexes in Charlotte previously owned by the Ervin Co., Providence Square and Four Seasons, have been purchased by Columbia Properties, in which Ervin and Crescent each own 50 per cent through two subsidiaries. Ervin will manage and expand the complexes. Contract price for Providence Square was $3.5 million, and for Four Seasons, $1.22 million.

Crescent has entered into another joint venture with the Ervin Co. in which Crescent provided land and Ervin provided development funds for Tega Cay, a large planned community near Lake Wylie.

Crescent has lent almost $3 million to Caro-Winds, a proposed amusement park-residential complex straddling the North Carolina-South Carolina border, and will become Caro-Winds' largest single stockholder when the stock is issued. Crescent has also contributed 1,165 acres towards the 3,000-acre project.

Crescent has some kind of an interest in a Lake Wylie project announced by Hilton Head Island developer Charles Frazer. Though plans have not yet been approved, the value of the venture should be in the millions of dollars.

Crescent has made a tentative start in the lucrative mobile home park held by leasing an operator land for a small part in Caldwell County.

Crescent is also ready to begin putting up land and money to build hundreds of apartment units a year throughout the Carolinas as joint ventures with builder-developers, and to develop commercial and industrial projects on its land, too.

A COMPLEX RELATIONSHIP

The story of Crescent is an interesting and complex one, involving questions of corporate finance, development tactics, all-electric construction and Crescent's relationship with its parent, Duke Power.

To learn about Crescent, The Observer made examinations of public records in North Carolina and South Carolina, talked with experts in the real estate, building and utilities fields and conducted interviews with Duke and Crescent officials and with E. Pat Hall, the developer of CaroWinds.

Charles Ervin, chairman of the board and founder of the Ervin Co., declined to meet with the Observer to discuss the relationship between his company and Crescent.

The Ervin Co. is offering its stock to the public for the first time, and is restrained by Securities & Exchange Commission rules from discussing some of the company's internal affairs.

The company, however, has published a preliminary prospectus that contains much information about its activities, and The Observer used that prospectus, as well as information from Duke and Crescent officials and other sources familiar with the Ervin Co.

People who have been following Crescent's dealings closely feel that the company, which has been supported by cash advances from Duke but is now trying to get on its own feet, is on the verge of making a lot of money.

The main reasons for this optimism lie in Crescent's ready access to cheap money via Duke, and the extremely low price it paid Duke for its 300,000 acres of non-utility land.

Crescent acquired the 300,000 acres—conservatively valued at $100 million—for $24.2 million. That was the price Duke paid when it acquired the land, much of which it has held for decades.

Asked why Duke had not realized a profit on the deal, Carl Horn, Duke's general counsel and executive vice president, said, "The laws required that the company and the subsidiary deal with each other at cost . . . There has been no profit in the transfer from Duke to Crescent of this land."

But the Securities & Exchange Commission ruling on June 23 may blight Crescent's rosy picture.

MICHIGAN CASE MAY AFFECT DUKE

The commission held that the Michigan Consolidated Gas Co., a subsidiary of American Natural Gas Co., should get out of the home construction business.

The commission said that Michigan Consolidated had to divest itself of its housing activities and had to confine itself to the utility field and to "incidental" businesses that are operationally related to utility activities.

The decision—which reversed a March, 1969, decision permitting Michigan Consolidated to build a townhouse project in downtown Detroit—is expected to be appealed.

But meanwhile, the decision casts doubt over Crescent's development activities. Duke has one other subsidiary, Mill Power & Equipment Co., but it deals only in equipment that Duke would otherwise have to buy elsewhere.

Should Crescent remain in business and make money, however, it may face another legal battle, with the N.C. Utilities Commission or the state attorney general's office.

The question is whether Crescent's profits should benefit Duke's customers, either reducing rates or reducing the requested increase, or whether all the benefits should accrue to Duke's stockholders.

To Horn, there is no question that the stockholders should be the sole beneficiaries.

Horn's position is that since the costs of carrying non-utility land are not included in the rate base, rate payers have no right to benefit from Crescent's profits.

"Dividends from Crescent will be non-utility income, and the investment will not be in the rate base," said Horn. Profits from Crescent, he said, would not be considered earnings as far as rate-fixing is concerned.

Horn's comment that Crescent's profits belong to Duke stockholders and not its customers may come under fire when the N.C. Utilities Commission begins its hearings.

In another rate increase request, brought before the commission in 1968 by the Lee Telephone Co., the attorney general contended that profits from a sister company, Centel Service Co., should be applied to telephone rates. Both Lee and Centel are owned by the Central Telephone Co.

When the utilities commission granted the increase without taking Centel's profits into account, the attorney general filed suit in the N.C. Court of Appeals, which turned down the request.

The attorney general then appealed the case to the N.C. Supreme Court, which is expected to consider it in September.

A phase of Crescent's activity that may come under scrutiny for the first time is its dealings with the Ervin Co.

Until the middle of last month—when the two companies jointly asked for shopping center zoning near the Providence Square Apartments in Charlotte and, in a separate announcement, said they were establishing a large community, Tega Cay, on the shores of Lake Wylie—the Crescent-Ervin relationship had not become apparent to the general public.

But documents in the Mecklenburg County register of deeds office show that Crescent has had dealings with Ervin since 1966. Records show that on March 31, 1966, just two weeks after it was formed, Crescent bought $852,500 worth of land from Ervin.

By June 30, 1969, records show, Crescent had made three more large purchases from Ervin and Montclaire Shopping Center, Inc., an Ervin subsidiary. The total of the four transactions were $2,222,500.

In April, 1970, according to the records, Crescent formed a joint venture with Ervin in a third company, Columbia Properties, Inc., and purchased the Providence Square and Four Seasons apartment complexes.

The Ervin Co. got $1,210,500 in cash (all put up by Crescent), and Columbia Properties and Crescent assumed mortgages of a bit over $3.5 million, making the total purchase price $4,720,000.

Since 1966, in seven major transactions not involving Ervin, Crescent acquired another $1,620,850 of land in Mecklenburg.

The records also show that in nine transactions between April 20, 1967, and June 18, 1970, Ervin bought back $555,600 of the same land it had sold Crescent earlier.

Crescent made a nominal profit on the deal, which meant, in effect, that Ervin got the land back for what Crescent had paid for it. None of the former Ervin land has been sold to any other party by Crescent.

"As I understood this," said Horn, "we had a gentleman's agreement that Duke would be offered a partnership in it (the land) for a joint venture. If Duke, didn't want it, Charlie Ervin would have the first right to buy."

Doug Booth, Duke vice president for marketing, said, "In every case, we transferred the land to him at a profit for us." Booth also said, however, that the profit was "nominal," once interest on the purchase money and taxes on the land were taken into consideration.

Booth said, "I suppose we could" sell what was once Ervin's land to someone else, but would not do so because of the "gentleman's agreement."

Booth said that the land Crescent returned to Ervin had been property that had been judged unsuitable for a joint venture between Crescent and Ervin.

"We have discovered that there are some pieces that, upon subsequent reflection, we don't feel to be quite as attractive as we had earlier thought," he said.

Booth said that the amount of land—$555,600 worth—returned to Ervin was "quite minor" in the over-all scheme of things.

You could trace this back to Duke's short term borrowings from banks at the prime rate for the purpose of advancing cash to Crescent," said Horn, adding, "This is a temporary thing."

He also said that money for the Ervin deals amounted to "such a small proportion of the over-all total (of Duke's short-term borrowings) as to be inconsequential." He did not say how much money was involved.

Since its relationship with Duke began in 1966 the Ervin Co. has made one change in building practice which has created some resentment among other local builders and speculation that the Ervin Co's business relationship with Duke is based on more than Ervin's size and expertise.

Horn said that Duke is trying as fast as it can to get Crescent on its own feet, so that it will no longer have to borrow money from Duke.

This means that Duke, which says in its rate increase request that it must refinance much of its short-term debt, will be able to restrict its borrowings to utilities purposes.

Duke's 1969 annual report says that "common stock and advances to unconsolidated subsidiaries" amounted to $21,874,000. Crescent is Duke's only unconsolidated subsidiary.

About half the money—something over $10 million—was lent to Crescent without cost to purchase land in the Keowee-Toxaway area, Horn said. Crescent and Duke, he said, are still sorting out what part of the Keowee-Toxaway land will be used for utilities purposes and what will be used for development.

It has been suggested that because of its vast land holdings and the implicit (though not explicit) backing it has from Duke, Crescent is just too big for other Carolinas developers, who must pay much more than 8.5 per cent for their money and lack holdings the size of Crescent's.

Horn does not agree with that analysis. "In a free enterprise economy," he said, "I don't see any reason why a utility should not be permitted to diversify."

Horn also feels that it would be unfair to regulate Crescent's activities the way the activities of its parent, Duke, are regulated: "The things that you regulate are those activities affecting the public interest. Your facilities are affecting the public interest only when you have a monopoly in a given area. We don't have a monopoly in the housing field."

It has been suggested that Duke, in an effort to avoid complications stemming from its ownership of Crescent, might distribute its Crescent stock to Duke shareholders. Under that procedure, known as "spinning a company off," Crescent would be totally independent and Duke would be rid of potential SEC and utilities commission investigation into Crescent.

Horn said that Duke "had never thought of" spinning off Crescent to its own stockholders.

DUKE MAY NEED SOME LAND BACK

One reason, he said, was that Duke might discover that it needed back some of the land it had sold Crescent at cost. Were Crescent an independent company, Duke would have to pay the present value of the land, Horn said, which would cost the company a lot of money.

Horn said that another factor preventing Duke from spinning off Crescent was the 300,000 acres, grossly undervalued at $24.2 million on Crescent's books.

"If Crescent were spun off," Horn said, "it

would just be an ideal target for a takeover. If you got a real shark that saw land with a book value like this—worth three or four times as much today—he'd pay a premium to get that stock. As soon as he did, everybody's lease rental on all these cottage sites along the lake would go up many-fold."

But even after Duke's planned stock offering this fall, an absolute majority of Duke shares will still be owned by the Duke Endowment, and tens of thousands more shares will be owned by other Duke family-controlled bodies.

That means that the Duke Endowment would own more than half of Crescent's shares should the company spin Crescent off. That would make it impossible for any "sharks" to buy control of a spun-off Crescent, unless the Duke family sold its shares.

Horn said that the N.C. Utilities Commission has investigated the books of Mill Power, Duke's other subsidiary, but had never looked closely into Crescent's affairs.

The reason is that Crescent did not actually have separate books until late last year.

All that may change when the rate increase request is discussed by the commission next month.

Before 1966, Ervin had built natural gas heating systems in almost all its houses. Since 1966, a glance of the Observer's files indicate, almost all of Ervin's new projects in Mecklenburg County have been all-electric.

Spokesmen for both Duke Power Co. and the Ervin Co. attribute this change to new technology in electric housing and air-conditioning systems that coincide with a surge in demand for central air-conditioning in new homes.

"NOT INTERESTED IN GAS" VENTURE

Horn and Booth denied that Crescent was using any influence to promote all-electric buildings in Ervin projects. Both pointed to some projects where, they said, Ervin is still installing gas heat, and both said that people who purchase or lease lots from Crescent are not told they must build all-electric.

Horn said he "categorically denied" Crescent's having imposed any heating requirements upon Ervin, but also said, "We're not interested in any joint venture that's going to be a great big gas development . . .

On the other hand, we have studiously avoided in any of our real estate transactions putting any condition in that the thing has to be all-electric. I've given an opinion I think we'd be in trouble under the North Carolina promotion statutes."

Amplifying the statement, Horn added: "You won't see any truck trailers out in the P&N Industrial Park (run by the Piedmont & Northern Railroad), you won't see any big rail receivers in a truck terminal. I don't apologize for not going into the development of oil- or gas-heated residential developments . . .

"In situations where our subsidiary is a partner, we choose electric heating because we think it's best, for one thing, and our stockholders should fire us all if we didn't. We don't see anything involving compulsion or restraint or trade or whatever, in a situation where we're sharing in the decision as to what's to be built."

Booth said that in the Crescent-Ervin joint ventures, Crescent puts up the land and money. Ervin provides expertise, and the two companies share in the profit.

"We picked the Ervin Co. as being a substantial, first-rate company that in our judgment was sound financially and had real good expertise in this area," he said.

"It's a risk situation and you can lose just as easily as you can make a profit in it. We wanted it to be profitable and we tried to pick a man we felt had substantial knowhow in this area."

Booth said that Crescent was not discriminating against other builders. He said that Crescent was talking to other builders, but did not name them.

"As we go down the road," Horn said, "we're not restricting this type of relationship to the Ervin Co. at all. In fact, we will probably be involved with other builders. Our only criteria will be that they be substantial builders and have the knowhow."

Said Horn: "We hold no brief for Mr. Ervin as such. We'd be willing to talk with anyone."

"Have you offered them (other builders) the exact same terms you've offered Ervin?" Ervin was asked.

"Those are negotiable," he answered. "They bring in a plan and we go over it."

Besides its major involvement with the Ervin Co.—an involvement Booth and Horn say extends beyond Mecklenburg to Durham and to Greenville, S.C.—Crescent has invested much land and money in CaroWinds, Inc.

Documents in the register of deeds office in Charlotte and in the York (S.C.) County Court house show that Crescent has lent CaroWinds $2,953,709.52 as of the end of June.

Of that sum, $939,148.02 was at seven per cent interest, 1.5 per cent less than Crescent paid Duke for its money.

In addition to the money, Crescent has contributed 1,156 acres of land—more than one-third of the project's total.

In return, according to Hall, Crescent is the largest single investor in CaroWinds and will have just under 20 per cent of the stock when it's issued.

CRESCENT'S HELP "APPRECIATED"

Hall—who could have probably raised the purchase money himself, but might have had to suffer losses to do it—said that Crescent had helped CaroWinds out of a tight spot, "and I appreciate it."

Hall's options on the CaroWinds land were expiring, and had he not been able to exercise them, the prime would doubtless have risen, dealing CaroWinds a severe—and perhaps fatal—blow.

"We've helped him (Hall) in an interim period," said Crescent President Herman Hermelink.

Said Horn: "You could trace it (the money) from Duke's short-term borrowings to advances to Crescent, and from Crescent to Pat Hall to pay this option price."

Horn said that Crescent had taken a loss on some of its loans to CaroWinds—lending almost a million dollars at seven per cent, after borrowing the money at eight-and-a-half—because all CaroWinds investors must put up some money at seven per cent to qualify to buy stock.

Crescent feels that the stock will be a good investment, Horn said, and will more than make up for the losses Crescent suffered by lending CaroWinds money below cost.

[Securities and Exchange Commission, Washington, D.C., March 31, 1969, Administrative Proceeding File No. 3-1721]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS COMPANY, MICHIGAN CONSOLIDATED HOMES CORPORATION, DETROIT, MICHIGAN (70-4648), PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, FINDING AND OPINIONS

(Holding Company Act Release No. 16331)

NON-UTILITY ACQUISITION BY UTILITY SUBSIDIARY OF REGISTERED HOLDING COMPANY

Application for approval of proposed acquisition, by public-utility subsidiary of registered holding company, of securities of non-utility subsidiary which proposed to construct low and moderate income urban housing project pursuant to National Housing Act and subject to approval of and regulation by Federal Housing Authority, *granted.*

APPEARANCES

Arthur R. Seder, Jr., and *Sidley & Austin*, for Michigan Consolidated Gas Company and Michigan Consolidated Homes Corporation.

Aaron Levy, Thomas W. Armstrong and *H. Kennedy Linge*, for The Division of Corporate Regulation of the Commission.

Commissioner Smith, with whom Commissioner Wheat joins:

This is an application under the Public Utility Holding Company Act of 1935 by a public utility subsidiary of a registered holding company to provide financing for a housing project in the Detroit inner city. The issue is whether the proposed investment would be detrimental to the carrying out of those provisions of the Act that limit the acquisition or retention of non-utility businesses.

The application is made by Michigan Consolidated Gas Company, a wholly-owned subsidiary of American Natural Gas Company, and by its subsidiary Michigan Consolidated Homes Corporation. Michigan Consolidated distributes natural gas at retail in various cities in Michigan including Detroit. In 1967 it had operating revenues of $251 million, net revenue of $24 million, and gross plant at the end of that year of $604 million.[1] Michigan Consolidated has recently organized Homes Corporation to construct and operate low and moderate income housing projects in Detroit as a "limited dividend" housing corporation under Section 221(d)(3) of the National Housing Act. Homes Corporation proposes to construct at an estimated cost of $2,340,000 a housing project of 130 units on 6.5 acres of cleared land in the Detroit inner-city area which it has an option to purchase from the Detroit Housing Commission.

To provide necessary construction funds, Homes Corporation proposes initially to issue and Michigan Consolidated proposes to acquire a maximum of $500,000 in Homes Corporation common stock and up to $3,000,000 in its short term promissory notes. It is presently estimated that during construction Homes Corporation will borrow from Michigan Consolidated only about $2,100,000 and issue to it only about $200,000 in common stock. When the construction is completed the outstanding notes will be retired with the proceeds of a $2,106,000 mortgage loan which Homes Corporation, as a limited dividend housing corporation, expects to obtain from the Federal National Mortgage Association. That loan will have a 40-year maturity and bear interest at 3%. It is contemplated that a construction company will build the housing project for a fixed fee as agent of Homes Corporation and that when completed the project will be managed by a local management firm. Homes Corporation's officers and employees will ordinarily be officers and employees of Michigan Consolidated, and Homes Corporation will be billed at cost for their services as well as for any services performed by personnel of the system service company. The project is subject to the approval of and regulation by the Federal Housing Authority.

While notice was given affording any interested persons an opportunity to request a hearing, no hearing was requested. As ordered in the notice and agreed upon by applicants and our Division of Corporate Regulation, we have considered the matter on the briefs filed by the parties and the record consisting of information and documents filed by applicants.

We believe applicants' participation in the Detroit inner city housing project meets the requirements of Section 11(b)(1) of the Act, as they have asserted. This overwhelmingly necessary and yet relatively limited investment of private capital cannot, in our

Footnotes at end of article.

view, be considered "detrimental to the carrying out" of the simplification and integration provisions of the Holding Company Act. Investment of private capital for such a purpose has been generally determined by Congress to be in the national interest [2] and specifically determined by management to be in the corporate interest—and both determinations have been made on the basis of compelling and uncontroverted facts of great significance to both the country and the company.

To parse it, the acquisition by applicant of stock and short-term notes of Homes Corporation requires, by virtue of Section 9(a)(1), approval of the Commission under Section 10. Section 10 then contains five general standards, at least two of which—10(b)(2) and 10(c)(2)—are clearly inapplicable to acquisitions of non-utility interests. A third—10(b)(1)—provides, in brief, that the acquisition must not tend towards interlocking relations or concentration of control of utility companies. This acquisition cannot. The fourth—10(b)(3)—provides that the Commission shall approve the acquisition unless it finds that the acquisition will unduly complicate the capital structure of the applicants (this acquisition will not) or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of the applicants' system. There is no basis in this record to make any such finding here; indeed, the clear weight of the evidence is to the contrary. Finally under Section 10(c)(1) as here pertinent, notwithstanding having satisfied the foregoing standards, the acquisition may not be "detrimental to the carrying out" of the provisions of Section 11.

Section 11 then instructs the Commission to take such action as it finds necessary to limit the operations of a holding company system to a single integrated system (or under certain conditions more than one) *and* to such other businesses as are "reasonably incidental, or economically necessary or appropriate to the operations" of an integrated public utility system. Section 11(b)(1) goes on to provide that the Commission may permit as (i) "reasonably incidental, or economically necessary or appropriate to the operations" of the system retention of a non-utility interest which the Commission finds is (ii) "necessary or appropriate in the public interest or for the protection of investors or consumers" and (iii) "not detrimental to the proper functioning" of the public utility system.[3]

The Commission has previously held that any interests whose retention would not be permitted under Section 11(b)(1) may not be acquired under Section 10(c)(1).[4] Any other reading would be inconsistent with carrying out the requirements of Section 11. Therefore, although there has been no court decision and relatively few Commission cases [5] dealing with an acquisition of non-utility properties, the retention cases are sufficient authority.

The Supreme Court has never dealt with the "other business" clauses of Section 11(b)(1) and its only comment with respect to them was a descriptive one made while deciding another issue. It said "other holdings may be retained only if their retention is related to the operations of the retained utility properties".[6] Several Courts of Appeal have addressed themselves to these clauses.[7] They make it clear that the burden is on an applicant to show affirmatively any "exceptional facts" [8] which the Commission must find to meet the triple test of Section 11(b)(1) for retention of non-utility properties. However, we do not read those cases as having given judicial sanction for all purposes to the particular formulation of the statutory test set forth in various Commission decisions that a showing is required of "an operating or functional relationship" [9] between the utility system and the non-utility business.

Some of the early Commission cases [10] and one Court of Appeals [11] interpreted the "other business" clauses as requiring a reference back to the Section 1(b)(4) legislative finding that the national public interest and the interest of investors and consumers are or may be adversely affected.

"when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties."

While this is a strong policy guidance against any acquisition of a non-utility business that bears "no relation" to the utility operations, that expression of concern must be read in the context of the other concerns Congress had about utility holding companies and which it expressed in Section 1(b): absence of accurate financial information for investors, overcapitalized structures that affected rate bases for consumers, excessive charges to the operating utilities by affiliates, ineffectiveness and obstruction of state regulation, control of utilities through disproportionately small investment, lack of economies in utility operations and in raising of capital, and inadequate service to consumers. None of these fundamental concerns are or can be remotely involved in the instant limited investment, nor can any of these weaknesses result from it. In our view Section 1(b) is a statement of policy that must be read as a whole to see the real problems with which Congress was then dealing.

Here there is no absentee management or geographical dispersion. This is not a speculative lark or financial manipulation by management that shows the insensitivity to a community's needs that was at the heart of Congress' concern in the Holding Company Act. This is just the reverse. Management shows a profound awareness of a very critical situation within their primary service district that directly affects both consumers and consumption,[12] and they have demonstrated a highly responsible approach to the problem.[13] Their proposal does not seem to us to raise any of the specters that haunted the utility industry in the 20's and 30's. We do not believe that the investment in the Detroit inner city housing project bears "no relation" to the operation of Michigan Consolidated. To the contrary, it "is related." [14]

There may be concern that any departure, no matter how limited, from an "operating or functional relationship" test in Section 11 would open the door to the acquisition by public utility holding companies or their subsidiaries of any kind of business enterprise. We would share that concern, in this era of business conglomeration, if such a development were reasonable forseeable. But in finding that this investment, so relatively small for Michigan Consolidated and its parent but so relatively important for the community, meets the public interest, and relationship standards of Section 11, we would certainly not be authorizing companies under the Act to launch into acquisitions of diverse commercial enterprises, or to commit disproportionate resources to unneeded housing projects, or to abuse their natural monopoly position in nonutility activities.[15]

We are here acting within a narrow sphere. The operations of the project in which Michigan Consolidated proposes to invest are regulated, and promoted, by federal law. Of the maximum amount of $3.5 million to be invested, $3.0 million will be in 18-month notes that will be refunded out of a federal mortgage loan. The whole investment is only two percent of the net worth of Michigan Consolidated at December 31, 1967, less than one percent of the consolidated net worth of its parent American Natural and the maximum equity portion is only one-seventh of the whole investment.

There is no need to give this 1935 statute an inflexible, static historical reading. Companies subject to it are now presented with the Congressionally recognized urban problems of the 1960's and 1970's that could not have been contemplated by the original enacters.[16] The desirability of private capital becoming involved in the rebuilding of our cities is widely recognized and urged,[17] and the posture today of the utility industry is substantially changed, at least in terms of the weaknesses at which the Holding Company Act was directed. Equally relevant, there has been evolving since the 1930's a broader notion of corporate responsibility to the community.[18]

In this case we are of the opinion that the applicants have affirmatively shown by "exceptional facts" that the acquisition of Homes Corporation securities in the amount applied for is (i) reasonably incidental or economically appropriate to applicants' operations, (ii) not detrimental to the proper functioning of their system, and (iii) appropriate in the public interest or for the protection of investors or consumers. Accordingly, their application should be granted.

OTHER MATTERS

The terms of the common stock and promissory notes proposed to be issued by Homes Corporation satisfy the provisions of Section 6(b) of the Act. Those relate to the issue and sale of securities intended solely to finance the business of a subsidiary that is not a holding company or a public-utility company. Although the total capitalization of Homes Corporation will consist of approximately 90% debt, a debt ratio substantially higher than that usually considered appropriate under the Act, this mode of financing is one of the incentives provided for private participation in housing projects under Section 221 of the National Housing Act, the mortgage loan will be made by FNMA, and the debt of Homes Corporation will have a minimal effect on the proforma consolidated debt of Michigan Consolidated.[19] Accordingly, it does not appear necessary to impose any conditions under Section 6(b) on the issuance of the securities by Homes Corporation.

Homes Corporation will take accelerated depreciation for Federal income tax purposes on depreciable property and will have substantial interest payments which will be deductible expenses for such tax purposes. As a result it anticipates it will have tax losses which will have the effect of reducing the effective tax on all the companies included in the American Natural system's consolidated Federal income tax return. Under Rule 45(b)(6) under the Act, a tax reduction resulting from tax losses sustained by one subsidiary of a registered holding company would be shared by all companies joining in the filing of a consolidated Federal income tax return. Since Michigan Consolidated will supply the equity investment and provide the temporary financing of construction, and because in all other respects the project is a local undertaking confined to the Michigan Consolidated service area, it is appropriate, as requested by applicants, that an exception from Rule 45(b)(6) be granted so as to authorize the allocation to Michigan Consolidated of any reduction in system taxes resulting from income tax losses of Homes Corporation.

Commissioner Owens, concurring in the result:

I join in the conclusion that the application for approval of the limited invetsment by Michigan Consolidated proposed in the regulated housing project be granted. I cannot, however, agree that such approval should be based upon a finding that the standards of Section 11(b)(1) are met. In my opinion there is no warrant for departing from the prior Commission interpretation that the "other business" clauses of that Section permit the acquisition of a non-utility business only if there is first "an affirmative showing

Footnotes at end of article.

of an *operating* or *functional* relationship between the operations of the retainable utility system and the nonutility business sought to be retained."[20] The business of Homes Corporation, which is non-utility in character, is related to the operations of the American Natural public-utility system only in that it may help to rehabilitate and preserve a major area serviced by Michigan Consolidated and thereby promote its general gas utility business. The Commission has held that a customer relationship between a non-utility company and a public utility company is not the type of operating or functional relationship which Congress contemplated when it established the standards of the "other business" clauses.[21] A relationship based on use of a utility's services could be established with respect to almost any business, and if permitted to constitute a basis of retainability under the "other business" clauses it would enable a utility system to engage in almost any sort of activity contrary to the intent of Section 11(b)(1).[22]

I would rest approval on the basis urged by the Division, that the special facts presented here justify a specific exemption under Section 9(c)(3) of the Act,[23] the Section under which the Commission has previously permitted limited acquisitions of securities of industrial development or home construction companies.[24] The proposed project in this case is part of a program under the National Housing Act designed to assist private industry in providing housing for low and moderate income families and displaced persons. Homes Corporation will be a limited dividend corporation, and will be subject to the requirements of the Federal Housing Administration with respect to the economic feasibility, construction, rents, operation, maintenance, accounts and other aspects of the project. One of its stated purposes is to stimulate others to join in a large scale construction of low and moderate cost housing in the blighted inner-city area of Detroit serviced by Michigan Consolidated, which would effectuate the policy of the Housing Act. Under these circumstances, I consider an exemption under Section 9(c)(3) for the proposed financing to be appropriate and not detrimental to the public interest or the interest of investors or consumers within the meaning of that Section.

An appropriate order granting the application and permitting the declaration to become effective will issue.

By the Commission (Commissioners Owens, Wheat, and Smith), Chairman Budge dissenting.

ORVAL L. DUBOIS, *Secretary.*

Chairman Budge, dissenting:

I am aware of the meritorious policy in the National Housing Act to assist private industry in providing programs to rehabilitate urban areas and the public interest sought to be served thereby. Unfortunately, the Housing Act does not authorize the Commission to ignore the prohibitions set forth in the Public Utility Holding Company Act.

In passing the Holding Company Act, the Congress enumerated, in Section 1(b), five separate conditions, each of which does or may, adversely affect "the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers. . . ." Thus, paragraph (4) of Section 1(b) states that such interests are or may be adversely affected "when the growth and extension of holding companies bears no relation to economy of management and operation or the intergration and coordination of related operating properties."

In order to give meaning to Section 1(c), which provides, inter alia, that all the provisions of the Act shall be interpreted "to meet the problems and eliminate the evils as enumerated in this section", Section 11(b)(1) must be construed in such a way as to effectuate Section 1(b)(4).[25] Given such a construction, there is an obvious inconsistency between the result reached here in granting this application and that reached by the Commission and the courts over the past twenty-five years.

On numerous occasions, the Commission has interpreted the "other business" clauses in Section 11 to mean that a non-utility business can be retained in a holding company system only on an affirmative showing of an operating or functional relationship between the non-utility business and the operations of the utility system.[26] The instant application does not make out such a showing.[27] The Commission's approval here goes far beyond the acquisition of small non-controlling interests in development or construction companies which it has previously approved. Indeed, the precedent thus established may inevitably result in the defeat of the Congressionally expressed objective of preventing utility holding companies from engaging in endeavors not functionally related to utility operations.

By the same token, it seems clear to me that Section 9(c)(3) of the Holding Company Act, which has been urged as a basis for action, does not give the Commission authority to grant Michigan Consolidated's application. That Section provides a statutory exemption from Commission approval under Section 10 only if the acquisition is "appropriate in the ordinary course of business of a registered holding company." Although Section 9(c)(3) does not specifically refer to the standards of Section 11 as criteria for approval, nevertheless, in order for the statute to work as Congress intended, Section 9(c)(3) must be read consistent with the requirement in Section 11 making it the duty of the Commission to *"limit the operations* of the holding company system . . . to a single integrated public utility system . . . and to *such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such integrated public utility system."* (Emphasis added.)

In the circumstances, I believe the conclusion is inescapable that the ownership and management of a housing corporation, however desirable, does not meet either the "other business" test under Section 11 requiring an operating or functional relationship to the operations of the utility system, or the test under Section 9(c)(3) of being "appropriate in the ordinary course of business" of a registered utility holding company.[28]

FOOTNOTES

[1] American Natural has two other gas utility subsidiaries which distribute gas at retail, Wisconsin Gas Company and Central Indiana Gas Company, and it also owns all the common stock of Michigan-Wisconsin Pipe Line Company which transports natural gas. For the year ended December 31, 1967, consolidated operating revenues of the American Natural system were $440 million and consolidated net plant as of that date was over $1.1 billion.

[2] Housing and Urban Development Act of 1968, Section 2, 42 U.S.C. § 1441; National Housing Act, as amended, Section 221(a), 12 U.S.C. § 1715 *l*(a).

[3] While there has been some debate about the independent significance of the two "other business" clauses in Section 11, we have sought to obviate that by accepting the clauses as providing a triple test, each part of which must be met. *Cf. Engineers Public Service Company,* 12 S.E.C. 41, 47 (1942).

[4] *Texas Utilities Company,* 21 S.E.C. 827, 829 (1946).

[5] See, for example, in addition to *Texas Utilities Company, supra; Missouri Power & Light Company,* Holding Company Act Release No. 12524 (June 3, 1954); *Arkansas Power & Light Company,* Holding Company Act Release No. 14164 (February 15, 1960); *The Peoples Natural Gas Company,* Holding Company Act Release No. 14709 (October 1, 1962); *Mississippi Power & Light Company,* Holding Company Act Release No. 14808 (February 27, 1963).

[6] *North American Co.* v. *S.E.C.,* 327 U.S. 686, 697 (1946).

[7] *Philadelphia Co.* v. *S.E.C.,* 177 F. 2d 720, 726 (D.C. Cir. 1949); *Arkansas National Gas Corp.* v. *S.E.C.,* 154 F. 2d 597, 599 (5th Cir. 1946); *United Gas Improvement Co.* v. *S.E.C.,* 138 F. 2d 1010, 1021 (3rd Cir. 1943); *North American Co.* v. *S.E.C.,* 133 F. 2d 148, 152 (2nd Cir. 1943). In these cases the Courts upheld the Commission which, in attempting to simplify huge holding company complexes, had ordered divestment of extensive non-utility operations found not to be reasonably related to the utility system. For example, in *North American* divestment was ordered of a railroad serving several cities in Virginia, and the major bus line and a large amusement park in the District of Columbia. In this and other cases the Commission has also ordered divestment of other enterprises which it found were intended primarily as separate businesses "devoted to independent ends and only accidentally and casually serv[ing] the interests of the [utility]system." *Engineers Public Service Company,* 12 S.E.C. 41, 50 (1942).

[8] *Philadelphia Co.* v. *S.E.C., supra* note 7, at 726.

[9] *Philadelphia Company,* 28 S.E.C. 35, 75 (1948), affirmed, *supra* note 7; *General Public Utilities Corporation,* 32 S.E.C. 807, 839 (1951).

[10] *North American Company* 11 S.E.C. 194 (1942); *Engineers Public Service Company, supra* note 7.

[11] *North American Co.* v. *S.E.C., supra* note 7 at 152–3, affirmed as to constitutionality, *supra* note 6.

[12] Applicant derives over 70 percent of its total revenues from the Detroit district and has a heavy fixed investment in the physical plant in the district. It has attached as exhibits to the application photographs which graphically illustrate the substandard housing conditions in the area where it intends to construct its housing project. Similar conditions exist in other areas of the city. It is estimated that in one section of Detroit housing over 162,000 persons, 53 percent of the housing units are dilapidated, deteriorating, or lack full plumbing. *Report of the National Advisory Commission on Civil Disorders,* p. 258 (1968). Michigan Consolidated maintains that lack of adequate housing has caused increasing numbers of residential customers to move from the inner city area. The company believes that unless steps are taken to halt further deterioration, similar consequences may be expected with respect to commercial customers. The existence of conditions such as applicant has illustrated in the Detroit district pose a potential threat both to continuation of service and to Michigan Consolidated's physical property in that area.

[13] The application reflects a responsiveness to interests not only of the community and the consumers living in the project area, but also of Michigan Consolidated's investors and hence its other consumers. There is every indication that the federal program enables the project to be on sound business footing. The federal loan commitment is a protection against any investment risk of the notes of Homes Corporation to be purchased by Michigan Consolidated. Michigan Consolidated estimates that the equity investment of $200,000, on the basis of a 20-year cash flow projection that assumes sale at original cost in the twentieth year, will result in a cash flow rate of return discounted to present worth of 21.6 percent per year.

[14] See text at note 6 above.

[15] We do not view approval of the present application as inconsistent with previous

Commission decisions which have held that the mere fact that a business is a consumer is not sufficient to warrant retention under Section 11(b)(1). *Cities Service Power and Light Company*, 14 S.E.C. 28 (1943); *Philadelphia Company, supra*, note 9. Michigan Consolidated does not rest its application on the housing project's becoming a consumer of gas. The estimated gas revenues of $26,000 per year, which would result in annual net income of approximately $2,600, must be considered *de minimus* when viewed in light of either the commitment of Michigan Consolidated to the housing project or its total utility revenues. We have determined that the proposed project is appropriate to Michigan Consolidated's utility operations not because it may be a customer, but for the more encompassing reasons indicated in the text. It is also doubtful whether in previous cases where divestment was ordered the Commission could have made, as can be made here, the other findings required by Section 11(b)(1). For example, in *Philadelphia Company* (at 81) the Commission stated specifically that: "even if the standard of retainability contained in the 'other business' clauses does not require a showing of a functional relationship between the utility system and the 'other business' sought to be retained, we cannot find on the evidence before us that the continued retention of the transportation properties . . . is necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functions of the Duquesne electric utility system."

[16] The Division of Corporate Regulation, while opposing the grant of the application under the standards of Sections 10 and 11, recognizes the exceptional circumstances present here and has recommended that the proposed acquisition be permitted pursuant to the exemption provisions of Section 9(c)(3) of the Act, to us a less satisfactory route and one as to which we have some doubt.

[17] See, *e.g.*, Report of the National Advisory Commission on Civil Disorder, by Panel on Private Enterprise, Appendix H to Commission Report (1968); Special Report, "Business and the Urban Crisis," Business Week (February 3, 1968); David Rockefeller, "The Social Responsibilities of Business to Urban America," Financial Executive (January 1969), p. 15; Downs, "Moving Toward Realistic Housing Goals," *Agenda for the Nation* (Brookings 1968), p. 141.

[18] See, *e.g., McKinsey Foundation Lecture Series* (McGraw-Hill): Blough, "Free Man and the Corporation" (1959), Watson, "A Business and its Beliefs" (1963), Oates, "Business and Social Change" (1968); *A. P. Smith Mfg. Co.* v. *Barlow*, 98 A.2d 581 (N.J. Sup. Ct. 1953); Editorial, "What Business Can Do For the Cities," Fortune (January 1968) p. 127; Albrook, "Business Wrestles With its Social Conscience," Fortune (August 1968) p. 89; Hetherington, *Fact and Legal Theory: Shareholders, Managers and Corporate Social Responsibility*, 21 Stan. L.R. 248, 290–1 (1969).

[19] As of December 31, 1967, Michigan Consolidated total debt was $260 million.

[20] *General Public Utilities Corporation*, 32 S.E.C. 807, 839–40 (1951) and cases therein cited; *Philadelphia Company*, 28 S.E.C. 35, 74–6 (1948), *aff'd Philadelphia Company* v. *S.E.C.*, 177 F.2d 720 (C.A. D.C., 1949).

[21] *The North American Company*, 32 S.E.C. 169, 183 (1950); *Cities Service Power & Light Company*, 14 S.E.C. 28, 39 (1943).

[22] *Philadelphia Company*, 28 S.E.C. 35, 78 (1948); *Cities Service Power & Light Company*, 14 S.E.C. 28, 39 (1943) and cases there cited.

[23] Section 9(c)(3) provides that the Commission may except from the prohibitions of Section 9(a) the acquisition of securities by a subsidiary of a registered holding company within such limitations as the Commission may prescribe as appropriate in the ordinary course of business and as not detrimental to the public interest or the interest of investors or consumers.

[24] See Rule 40(a)(5); *Consolidated Gas Supply Corporation*, Holding Company Act Release No. 15877 (October 17, 1967). See also *Columbia Gas of Pennsylvania, Inc.*, Holding Company Act Release No. 16078 (May 29, 1968), and *The Peoples Natural Gas Company*, Holding Company Act Release No. 16049 (April 30, 1968).

[25] *North American Co.* v. *S.E.C.*, 133 F. 2d 148 (C.A. 2, 1943), aff'g. 11 S.E.C. 194 (1942), affirmed on certiorari limited to constitutional issues, 327 U.S. 686 (1946). The Court of Appeals in upholding the Commission's interpretation of Section 11(b)(1) noted, at pp. 152–153, that it was consonant with the policy of the Act expressed in Section 1(b)(4).

[26] See cases cited in the Answering Brief of the Division of Corporate Regulation, page 14, and footnote 13 therein.

[27] A closer case than that presented here was the Commission's Section 11 proceeding against *Cities Service Power & Light Company*, 14 S.E.C. 28 (1943). There it was urged that a company operating trolley cars and motor coaches in the City of Toledo was retainable in the holding company system since it purchased all its electric energy requirements from the electric utility company and that the public interest would be served by an adequate transportation system which would attract industries to the locality. The Commission refused to permit retention, stating at page 39:

"The claim that a customer relationship between a non-utility company and a public utility company satisfies the standards of the 'other business' clauses, has already been twice rejected. [citations omitted] We find no warrant for accepting it here. The function of distributing electricity does not, in ordinary contemplation, or under the Act, comprehend ownership of the customers as 'reasonably incidental or economically necessary or appropriate.'"

In *Philadelphia Company*, 28 S.E.C. 35 (1948), the Commission found in the Section 11 proceeding that a street railway system which purchased all its electric power from the electric utility company could not be retained, saying on page 78:

"Similarly, the relationship established by reason of the consumption of electric power is not the type of operating or functional relationship which Congress contemplated when it established the standards of the 'other business' clauses, for that characteristic can also be established with respect to almost any industry and, if permitted to form the basis for retainability, would enable electric utility systems to engage in any and every sort of activity, which is precisely what Congress intended to correct through Section 11(b)(1)."

[28] This conclusion is confirmed by the fact that Michigan Consolidated contemplates undertaking similar projects of approximately 500 units per year. Such an undertaking necessarily requires the further acquisition of large tracts of land, and, perhaps, the construction of community and shopping or other commercial facilities as permitted under the Housing Act.

[United States of America before the Securities and Exchange Commission, March 31, 1969, Administrative Proceeding File No. 3–1721]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS CO., MICHIGAN CONSOLIDATED HOMES CORP., DETROIT, MICH. (70–4648), PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, ORDER AUTHORIZING ACQUISITION OF SECURITIES AND GRANTING EXCEPTION FROM RULE 45(b)(6)

An application-declaration and amendments thereto have been filed with this Commission pursuant to Sections 6, 7, 9(c)(3) and 12 of the Public Utility Holding Company Act of 1935 and Rules 43 and 45 promulgated thereunder seeking authorization for Michigan Consolidated Gas Company, a public-utility subsidiary company of American Natural Gas Company, a registered holding company, to acquire up to 5,000 shares of the $100 par value common stock and up to $3,000,000 of short-term promisory notes of Michigan Consolidated Homes Corporation and for the issuance thereof by Homes Corporation. Michigan Consolidated also requested an exception from Rule 45(b)(6) to permit the allocation of Homes Corporation's expected tax losses to Michigan Consolidated.

Briefs have been filed by Michigan Consolidated and the Division of Corporate Regulation after appropriate notice of the proposed transactions was given.

The Commission has this day concluded that the proposed acquisitions should be authorized.

Accordingly, it is ordered that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective, subject to the terms and conditions contained in Rule 24 under the Act.

It is further ordered that the request for an exception from Rule 45(b)(6) be, and it hereby is, granted.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

United States of America before the Securities and Exchange Commission, August 20, 1970, Administrative Proceeding File No. 3–2408]

IN THE MATTER OF MISSISSIPPI POWER & LIGHT CO., SUNSET PLAZA APARTMENTS, INC., JACKSON, MISS. (70–4867), PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, MEMORANDUM OPINION AND ORDER

(Holding Company Act Release No. 16814)

ACQUISITION OF SECURITIES OF NON-UTILITY COMPANY BY PUBLIC UTILITY SUBSIDIARY OF REGISTERED HOLDING COMPANY

Application under Sections 9(a) and 10 of Public Utility Holding Company Act of 1935 for approval of proposed acquisition, by public-utility subsidiary company of registered holding company, of securities of non-utility subsidiary company which proposes to construct low and moderate income housing project pursuant to National Housing Act, *denied*, as not meeting standards of that Act.

Mississippi Power & Light Company ("MP&L"), a public-utility subsidiary company of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its wholly-owned subsidiary company, Sunset Plaza Apartments, Inc. ("Sunset Plaza"), a non-utility company recently organized under Mississippi law, have filed an application-declaration and an amendment thereto with this Commission pursuant to Sections 6, 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder regarding the following proposed transactions.

MP&L distributes electric energy at retail in various cities and towns in the State of Mississippi, including the City of Jackson. Sunset Plaza was organized for the purpose of constructing, owning and operating low and moderate income housing projects under Section 221(d)(3) of the National Housing Act, as amended. MP&L proposes, through Sunset Plaza, to construct, as a pilot project, 120 housing units for low and moderate income families in the inner-city area in the City of Jackson. To provide construction funds for the project MP&L requests authorization to acquire and Sunset Plaza to issue and sell, up to $200,000 of common stock and $2,000,000 of promissory notes. No State commission and no Federal com-

mission, other than this Commission, has jurisdiction over the proposed transactions.

Public notice of the application-declaration was issued (Holding Company Act Release No. 16781), pursuant to which interested persons were given an opportunity to request a hearing. No hearing has been requested or ordered, and MP&L has agreed that we may consider the matter on the basis of the application on file.

In light of our decision in *Michigan Consolidated Homes Corporation* on June 22, 1970 (Holding Company Act Release No. 16763), we must deny the application-declaration. The housing project, which in all relevant respects is identical with that proposed by Michigan Consolidated, lacks the operating or functional relationship required by Section 10(c)(1), which incorporates Section 11(b)(1), between such a nonutility business and the operations of an integrated public-utility system. The fact that MP&L requests approval of the pending proposal as a pilot project and that it contemplates no additional housing projects, does not serve to distinguish this application from the one rejected in the *Michigan Consolidated* case. The import of the *Michigan Consolidated* decision is that any such venture is prohibited by the Act. Accordingly, we conclude that MP&L's application-declaration cannot be approved. Nor, for reasons there stated, may we exempt the acquisitions under the provisions of Section 9(c)(3) of the Act.

It is ordered, accordingly, that said application-declaration, as amended, be, and it hereby is, denied and not permitted to become effective.

By the Commission (Chairman Budge and Commissioners Needham and Herlong), Commissioners Owens and Smith dissenting in separate statements.

ORVAL L. DUBOIS,
Secretary.

Commissioner Owens, concurring in part and dissenting in part:

I reiterate my opinion as expressed in both prior *Michigan Consolidated* proceedings (Holding Company Act Release Nos. 16331 and 16763). While I concur that Sections 10(c)(1) and 11(b)(1) do not permit a public-utility holding company registered under the Act or a subsidiary company thereof to engage in the housing business, I adhere to my views that an exemption under Section 9(c)(3) is appropriate where justified by the special circumstances of a particular application. I feel that the factual situation presented by MP&L's application closely parallels the facts in the *Michigan Consolidated* proceedings. I, therefore, would approve this application pursuant to Section 9(c)(3).

Commissioner Smith, dissenting:

As the factual pattern of the instant proposal is indistinguishable from that of *Michigan Consolidated*, I adhere to the views I expressed in both prior *Michigan Consolidated* proceedings and conclude that the application-declaration should be granted either as an "other business" permissible under Section 11(b)(1), upon which I, again, place primary reliance, or by way of an exemption under the provisions of Section 9(c)(3).

[Securities and Exchange Commission, Washington, D.C., June 22, 1970, Administrative Proceeding File No. 3-2111]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS CO., MICHIGAN CONSOLIDATED HOMES CORP., DETROIT, MICH. (70-4778), PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, FINDINGS AND OPINION

(Holding Company Act Release No. 16763)

ACQUISITION BY PUBLIC UTILITY SUBSIDIARY COMPANY OF REGISTERED HOLDING COMPANY OF SECURITIES OF NON-UTILITY COMPANY

Application under Sections 9(a) and 10 of Public Utility Holding Company Act of 1935 for approval of proposed acquisition, by public-utility subsidiary company of registered holding company, of securities of nonutility subsidiary company which proposed to construct low and moderate income urban housing projects pursuant to National Housing Act, *denied*, as not meeting standards of Holding Company Act.

Acquisition by public utility subsidiary company of registered holding company of stock and notes of wholly owned subsidiary company formed to construct and operate housing projects under National Housing Act *may not be authorized* under "other business" clauses of Section 11(b)(1) of Public Utility Holding Company Act of 1935 in absence of showing of operating or functional relationship between such nonutility business and operations of integrated public utility system.

Acquisition of ownership and management of a housing corporation *does not meet* test for exemption under Section 9(c)(3) of Public Utility Holding Company Act of 1935 as being appropriate in ordinary course of business of public-utility subsidiary company of a registered holding company.

APPEARANCES

Arthur R. Seder, Jr., and *Sidley & Austin*, for Michigan Consolidated Gas Company and Michigan Consolidated Homes Corporation.

Solomon Freedman, Aaron Levy and *H. Kennedy Linge*, for the Division of Corporate Regulation of the Commission.

On March 31, 1969, the Commission, by a divided vote, granted an application, filed pursuant to the Public Utility Holding Company Act of 1935 ("Act"), for authorization to Michigan Consolidated Gas Company ("Michigan Consolidated") to provide financing for a housing project in Detroit, Michigan, through investment in and loans to its wholly-owned subsidiary company, Michigan Consolidated Homes Corporation ("Homes Corporation"), a company which was organized to construct and operate low and moderate income housing projects as a "limited dividend" housing corporation under the National Housing Act.[1] That housing project has been virtually completed and two additional projects (Inkster and Elmwood) are presently under construction for which funds have been advanced on notes issued by Homes Corporation to Michigan Consolidated. These two companies have now filed another application relating to the financing of the two additional housing projects.

Public notice of the instant application was given affording any interested person an opportunity to request a hearing. No hearing has been requested or ordered. Pursuant to the notice and the agreement of applicants, we have considered the matter on the application, certain additional information supplied by applicants, and the briefs filed in the prior proceedings.

PROPRIETY OF ADVANCES AND NOTES

Michigan Consolidated is a gas utility subsidiary company of American Natural Gas Company, a registered holding company under the Act. As a subsidiary company of a registered holding company, Michigan Consolidated is prohibited by Section 9(a)(1) of the Act from acquiring any securities or any other interest in any business without our approval under Section 10. The prior Commission action authorized Michigan Consolidated, pursuant to its request, to acquire up to $500,000 in common stock and up to $3,000,000 of short term promissory notes of Homes Corporation, in connection with a proposal by Homes Corporation to construct a housing project of 130 units on 6.5 acres in the Detroit inner-city area at an estimated cost of $2,340,000. It was proposed that upon completion of the construction the outstanding notes would be retired with the proceeds of a mortgage loan which Homes Corporation expected to obtain from the Federal National Mortgage Association.

Footnotes at end of article.

Homes Corporation obtained a mortgage loan of $2,086,000 on the first project, and used $1,900,000 of the proceeds to retire a like amount of notes it had issued to Michigan Consolidated. It also appears that as of March 20, 1970, Michigan Consolidated had made advances of $1,855,000 and $410,000, respectively[2] evidenced by notes issued to it by Homes Corporation, to finance construction of the two new housing projects, one of which is in Inkster, a suburb of Detroit.

The application now before us requests authorization for Michigan Consolidated to acquire and for Homes Corporation to issue an additional $500,000 in Homes Corporation stock to provide equity capital for the two projects now proposed and others, and up to $6,000,000 in short term Homes Corporation notes to provide for construction and other expenses for the Inkster and Elmwood projects.

The interim financing for the two new projects was not covered by the authorization of March 31, 1969. Any reading of the opinions of the Commissioners who joined in the prior authorization makes it clear that such authorization was limited to the specific housing project described in the application then before the Commission. Repeated references were made to a housing project in the Detroit inner city, to the conditions existing in that area and to the fact that such area was in Michigan Consolidated's primary service area. That Michigan Consolidated and Homes Corporation contemplated that they might undertake additional housing construction projects in other parts of the Detroit area is not a basis for any inference or finding that the authorization covering the first project would extend to subsequent projects. Certainly, the retirement of $1,900,000 in notes issued in connection with the financing of the first housing project for which authorization was granted did not authorize advances and notes in an equivalent amount for new and different projects.[3]

THE OTHER BUSINESS CLAUSES OF SECTION 11(B)(1)

We overrule the prior Commission determination and find that authorization for financing of housing projects of this nature by registered holding companies or subsidiary companies thereof under the Holding Company Act is not permissible under the standards and requirements of that Act.

Section 10(c)(1) directs that we shall not approve "an acquisition of securities . . . or of any other interest . . . which is detrimental to the carrying out of the provisions of Section 11." Section 11(b)(1) requires us to limit the operations of a registered holding company system to a single integrated public-utility system (or under certain conditions more than one) and to "such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations" of an integrated public-utility system, including interests in any other business which we find "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system." Section 11(b)(1) is a basic provision of the Act[4] designed to implement the legislative findings set forth in Section 1(b) of the Act wherein the Congress enumerated five separate conditions, each of which does or may, adversely affect "the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers. . . ." Paragraph (4) of Section 1(b) states that such interests are or may be adversely affected "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties."

In order to give meaning to Section 1(c), which provides, inter alia, that all the provisions of the Act shall be interpreted "to

meet the problems and eliminate the evils as enumerated in this section", Section 11 (b)(1) must be construed in such a way as to effectuate Section 1(b)(4) and reflects a Congressional policy against acquisitions of interests in non-utility businesses that bear no functional relation to utility operations.

In connection with the adoption of Section 11(b)(1) Senator Wheeler, the manager of the bill in the Senate, emphasized "the principle that utility holding companies shall confine themselves to gas and elecrtic service and not continue to mix into all manner of other businesses." 79 Cong. Rec. 10,847 (74th Cong., July 9, 1935). See also *United Gas Improvement Co.* v. *S.E.C.*, 138 F. 2d 1010, 1019 (C.A. 3, 1943) where the court stated:

"The obvious intention of Congress in enacting Section 11(b)(1) was to integrate public utility holding company systems and to compel holding companies subject to the Act to relinquish interests in unrelated utilities as well as unrelated nonutility companies. The myriad, promiscuous activities and investments of some of the holding company systems was a prime cause of investors' losses."

Following this legislative purpose and the policy guidelines set forth in Section 1(b)(4), the Commission has frequently held that the two "other business" clauses of Section 11(b)(1), read together permit the retention of a nonutility business only on "an affirmative showing of an *operating* or, *functional* relationship between the operations of the retainable utility system and the nonutility business sought to be retained, and that retention would be in the public interest."[5] It is significant to note that this interpretation has been sustained by the Courts of Appeals of four circuits. *North American Co.* v. *S.E.C.*, 133 F. 2d 148, 152–153 (C.A. 2, 1943), affirmed on certiorari limited to constitutional issues, 327 U.S. 686 (1946); *United Gas Improvement Co.* v. *S.E.C.*, 138 F. 2d 1010, 1019–22 (C.A. 3, 1943); *Arkansas Natural Gas Corp.* v. *S.E.C.*, 154 F. 2d 597 (C.A. 5, 1946), cert. den. 329 U.S. 738 (1946); *Philadelphia Co.* v. *S.E.C.*, 177 F. 2d 720 (App. D.C. 1949).[6] Any property or interest whose disposition would be required under these tests may not be acquired.[7]

The business of Homes Corporation, which is non-utility in character, is related to the operations of the American Natural public-utility system only in that it may help to rehabilitate and preserve areas serviced by Michigan Consolidated and thereby promote its general gas utility business. The Commission has held that a customer relationship between a non-utility company and a public utility company is not the type of operating or functional relationship which Congress contemplated when it established the standards of the "other business" clauses.[8] A relationship based on use of the utility's services could be established with respect to almost any business, and if permitted to constitute a basis for retainability under the "other business" clauses it would enable a utility system to engage in almost any sort of activity contrary to the intent of Section 11(b)(1).[9] We accordingly conclude that there has been no showing of the appropriate relationship between the business of Homes Corporation and the gas utility business of Michigan Consolidated.

THE ORDINARY COURSE OF BUSINESS TEST IN SECTION 9(C)(3)

Nor does section 9(c)(3) of the Holding Company Act, which has been advanced by the Division of Corporate Regulation as a basis for favorable action, provided authority to grant the instant application. That section provides that an exemption from the prohibitions of Section 9(a) may be granted for the acquisition of "such commercial paper and other securities . . . as the Commission may . . . prescribe as appropriate in the ordinary course of business of a . . . subsidiary company [of a registered holding company] and is not detrimental to the public interest or the interest of investors or consumers." This clearly indicates that the securities to be acquired must be in the "ordinary course" of the business of the acquiring company. The acquisition here proposed would enable Michigan Consolidated to become engaged, through a wholly controlled subsidiary company, in the business of constructing and operating a housing development. The "ordinary course of business" of Michigan Consolidated is the operation of a retail gas business and not a housing project, nor are the retail gas business and the housing business related businesses. Section 9(c)(3) cannot be employed to evade the proscription of Section 11(b)(1) prohibiting the acquisition by a gas utility company of an interest in a business unrelated to its business.[10]

Further, given the construction of the mandate of Section 1(c), noted above, we cannot find it is not detrimental to the public interest or the interest of investors or consumers to have a registered holding company grow and extend into areas which bear no relationship to the integration and coordination of that company's integrated gas utility system.[11]

This case differs in important respects from those relied upon by applicants where the Commission issued orders exempting from Section 9(a) acquisitions of small amounts of securities of industrial development or home construction companies, which involved only investments in, and have not involved ownership and control of, another business by the acquiring company.[12] As noted, Homes Corporation is wholly owned by and under the direction and control of Michigan Consolidated.

We are fully aware of the meritorious policy in the National Housing Act to assist private industry in providing programs to rehabilitate urban areas and the public interest sought to be served thereby. However, the Housing act does not authorize this Commission to ignore the express policy findings and prohibitions set forth in the Public Utility Holding Company Act.

In the circumstances, we believe the conclusion is inescapable that the ownership and management of a housing corporation, however otherwise desirable in the context of other statutes, does not meet either the "other business" test under Section 11 requiring an operating or functional relationship to the operations of the utility system, or the test under Section 9(c)(3) of being "appropriate in the ordinary course of business" of a subsidiary company of a registered holding company.

An appropriate order will issue.

By the Commission (Chairman Budge and Commissioners Needham and Herlong), Commissioner Owens concurring in part and dissenting in part, and Commissioner Smith dissenting.

ORVAL L. DUBOIS,
Secretary.

Commissioner Owens, concurring in part and dissenting in part:

I concur with the majority in finding that the prior authorization did not cover the acquisition of short term notes for the two new projects and that approval of investment by Michigan Consolidated in the housing projects cannot be based upon a finding that the standards of Section 11(b)(1) are met. I reiterate my opinion, expressed in the prior proceeding, that there is no warrant for departing from the prior Commission interpretation that the "other business" clauses of that Section permit the acquisition of a non-utility business only if there is first "an affirmative showing of an operating or functional relationship between the operations of the retainable utility system and the non-utility business sought to be retained."[13] I also adhere to the view that no such relationship has been shown here.

I would, however, consider applications of this kind on an *ad hoc* basis and, dissenting from the majority, I conclude that, as urged by the Division of Corporate Regulation, the special circumstance present here justify a specific exemption under the provisions of Section 9(c)(3) of the Act. That Section provides that we may except from the prohibitions of Section 9(a) the acquisition of securities by a subsidiary of a registered holding company within such limitations as we may prescribe as appropriate in the ordinary course of business and as not detrimental to the public interest or the interest of investors or consumers.

I recognize that the statutory authority in Section 9(c)(3) of the Act is subject to the limitations described therein,[14] and that acquisitions pursuant to that Section should be permitted only in unusual and exceptional circumstances. The Commission has held, however, that the authority conferred upon us to exempt acquisitions by order was intended to permit us to consider the requirements of the particular applicant, rather than of holding companies or their subsidiaries generally.[15] In this case, I have taken into consideration the fact that Michigan Consolidated's proposal entails a relatively small investment in relation to its total net worth; that it is a response to important adverse developments in a major gas service area of the company and is designed to remedy their economic and operating consequences; that it is part of a Federal program under the National Housing Act as amended designed to assist private industry in providing housing for low and moderate income families and displaced persons; and that in the carrying out of its project it will be subject to an over-riding system of regulation. As a limited dividend corporation, Homes Corporation, in receiving long term low interest mortgage loans under the program, may not pay dividends in excess of 6% per year on its equity investment in the project and will be subject to regulations of the Federal Housing Administration ("FHA") with respect to the rents that may be charged and the maximum construction costs. The FHA requires such a mortgagor to submit data demonstrating the economic feasibility of its project, and to enter into a regulatory agreement covering the operation, maintenance and other aspects of the project. The mortgagor must keep accounts in accordance with a prescribed uniform system of accounts, and all plans and specifications must be approved by the FHA which also inspects construction and supervises all stages of the project. Applicants assert that their proposed projects, which they hope will lead to others joining in a large scale construction of low and moderate cost housing in the blighted inner-city area of Detroit, will effectuate national policy and will help to preserve and rehabilitate the Detroit area as a major service area of Michigan Consolidated.

I think the majority unduly constricts the scope of the Section 9(c)(3) exemption when it holds that to be entitled to such exemption a transaction must also meet the standards of Section 11(b)(1). Section 9(a) prohibits any acquisition of the type described therein unless the Commission has approved that acquisition pursuant to Section 10. Section 10(c)(1) provides that no such approval is to be granted by the Commission if it would be detrimental to the carrying out of the provisions of Section 11. Thus, it is Section 9(a) that makes both Sections 10 and 1 considerations relevant to Commission approval of the acquisition. Section 9(c)(3) states explicitly that Section 9(a) shall not apply to an acquisition approved pursuant to Section 9(c)(3). By permitting an exception from the requirements of Section 9(a), Section 9(c)(3) clearly authorizes a depar-

Footnotes at end of article.

ture from the requirements of Section 11(b)(1) so as to allow as appropriate in the ordinary course of business an acquisition of an interest unrelated to the public-utility functions of the holding company where the other stated exemptive standards are satisfied.

For the reasons I have stated I believe the cautionary standards of Section 9(c)(3) are satisfied in this case, and I would approve the proposed acquisitions as appropriate in the ordinary course of Michigan Consolidated's business and not detrimental to the public interest or the interest of investors or consumers. I am not concerned that applicants may desire to undertake additional projects in the future. Applicants request approval of two specific projects now before us, and any future acquisitions will require an application to the Commission. The authority and discretion granted to the Commission by Section 9(c)(3) provides sufficient assurance that the limitations prescribed thereunder will be observed and applied.

Commissioner Smith, dissenting:

The majority today overrules a decision of the Commission with respect to the same applicants made only a year ago.[16] I believe that the present application, as the prior one, presents an ample basis for exercise of the Commission's authority to approve acquisitions which are not "detrimental to the carrying out" of the simplification and integration provisions of the Holding Company Act. This is so whether the acquisition is deemed to fall within the "other business" clauses of Section 11(b)(1), upon which I would place primary reliance, or by way of an exemption within the provisions of Section 9(c)(3) upon which Commissioner Owens would grant the application.

In its prior decision, the Commission did not attempt to spell out definitive guidelines to the range of permissible acquisitions which a holding company system might undertake pursuant to Congressionally recognized housing programs. Nor was there any need to do so. Based upon the record developed in that case—which is virtually identical with the record before us here—the Commission determined that the application should be granted.[17] The majority now flatly precludes any administrative accommodation of the policies of the Holding Company Act to the policies of the Housing Act. Yet changes in our social and economic environment, to which many corporations are seeking to respond, affect utility holding companies as well as other members of the corporate community.

As was stated last year:

"This overwhelmingly necessary and yet relatively limited investment of private capital cannot, in our view, be considered 'detrimental to the carrying out' of the simplification and integration provisions of the Holding Company Act. Investment of private capital for such a purpose has been generally determined by Congress to be in the national interest and specifically determined by management to be in the corporate interest—and both determinations have been made on the basis of compelling and uncontroverted facts of great significance to both the country and the company."

My full views regarding the application of Section 11(b)(1) to a project such as those here involved are set forth in the prior case. While adhering to those views I shall not repeat them here, except to note that I there analyzed the cases and statutory provisions cited by the majority and reached a different conclusion.

The Act is not, as the majority construes it, an inflexible limitation of registered holding company systems to the hole business of providing utility services. If Congress had wished to impose that result, it could readily have done so in the Act. The fact is that it did not. To the contrary, Section 11(b)(1) expressly delegates to the Commission the power to "permit as [i] reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find [ii] necessary or appropriate in the public interest or for the protection of investors or consumers and [iii] not detrimental to the proper functioning of such system or systems" (emphasis added).

As the majority correctly points out, the Congressional delegation was certainly not an invitation to permit utility systems to engage in any sort of business merely because that enterprise might be located within the utility's primary service district and would thereby provide a source of revenue to the utility.[18] But that is not what is involved here. Here we have two local housing projects, desperately needed by the community which applicants are committed to serve, promoted and regulated by the federal government as a high national priority, and requiring only a relatively small commitment of capital. In the circumstances here I can see no basis for finding that the housing projects would in any way be "detrimental to the proper functioning of" the utility system.

The questions left then are whether the "other business" here is reasonably incidental or economically necessary or appropriate to the operations of the utility system, and necessary or appropriate in the public interest or for the protection of investors or consumers. Essentially the same questions arise under Section 9(c)(3); namely, whether the proposed acquisition may be approved as being "appropriate in the ordinary course of business . . . and as not detrimental to the public interest or the interest of investors or consumers."

The fulcrum of any reasoned analysis of these questions is the term "business." Corporate business functions are becoming broader in concept than a strict limitation to operations, and engagement in relevant community affairs is becoming a customary corporate role. Public utility companies in particular, to a far greater extent than many other industrial concerns, have a basic commitment to the areas they serve. In essence, the Holding Company Act sought to insure that commitment. It is not possible for a utility simply to pull up stakes and move to another area when its existing service district becomes difficult or impossible to service efficiently and at maximum profit to its shareholders. If large portions of the service area become dilapidated and unfit for habitation, the utility must face not only a possible reduction in revenue but the additional expense and burden of servicing areas that lie beyond the service vacuum created by such conditions.

By its enactment of the National Housing Act, Congress sought to involve large American corporations in a concerted effort to alleviate one of the primary social and economic problems of our urban society—inadequate housing, and all that entails. The Congressional mandate stems from a growing recognition by the corporate community itself that primary business purposes cannot be isolated from the fulfillment of basic social needs. It is becoming increasingly difficult to conduct business as usual unless action is taken to alleviate critical problems of our urban communities. In this case the Commission is being asked only to permit (not require) applicants to make a relatively small contribution to their community. The keystone of the Housing Act is a voluntary commitment of capital by private corporations, buttressed by federal mortgage loans and governmental supervision. Applicants made that commitment in an enlightened way and with full appreciation of its business as well as social purpose. Viewed in narrow terms, it is of course true that these investments do not directly facilitate the services of providing energy, heat, light or power. However, as noted in the Commission's opinion last year, the Act does not require a direct relationship if the requirements of the "other business" test are met.

In light of the Congressionally recognized relevance of the present investments, I think it can readily be found that those investments are, under Section 11(b)(I), both reasonably incidental and economically necessary or appropriate to the operations of the utility system. As the applicants have demonstrated, the proposed housing projects involve modest commitments of capital and provide an economic return on those investments both to investors and consumers. For the same reasons the investments are likewise, under Section 9(c)(3), "appropriate in the ordinary course of business" under any construction of that term which takes into account the dynamics of contemporary corporate functions and responsibilities. It is equally clear that the investments are necessary or appropriate in the public interest or for the protection of investors and consumers. The underlying social purpose and policy basis of these investments are entirely consistent with the broad conceptions of the public interest embodied in the Holding Company Act.

The Congressional recognition of the importance of corporate participation in the rehabilitation and rebuilding of our urban communities reflects a realistic view of the changing needs of American society. The same sense of realism should pervade the application of the standards for acquisitions under Sections 9 and 10 of the Holding Company Act. The anachronistic analysis of the majority's decision neither achieves the objective of corporate economic responsibility with which the Act was concerned nor is it in keeping with the broader notions of corporate social responsibility which have been evolving since its enactment some 35 years ago.

FOOTNOTES

[1] *Michigan Consolidated Gas Company*, Holding Company Act Release No. 16331. Commissioners Smith and Wheat held that the acquisition by Michigan Consolidated of stock and notes of Homes Corporation was permissible under the "other business" clauses of Section 11(b)(1) of the Act. Commissioner Owens, while concluding that such acquisitions could not be authorized under the standards of Section 11(b)(1), concurred in the authorization, finding that the transactions could qualify as exempted acquisitions in the ordinary course of Michigan Consolidated's business under Section 9(c)(3). Chairman Budge dissented holding that such acquisitions met neither the tests of Section 11(b)(1) nor those of Section 9(c)(3).

[2] As of May 15, 1970, six additional notes had been issued as follows: two on April 15, 1970, in the amounts of $70,000 and $15,000; two on May 13, 1970, in the amounts of $140,000 and $30,000; and two on May 15, 1970, in the amounts of $200,000 and $227,832.

[3] In view of the illegality of the transactions respecting the two projects, Michigan Consolidated must divest itself of the interests concerned. We of course do not hereby intend to and we do not undertake to withdraw or set aside the previous authorization.

[4] As the Supreme Court noted, in sustaining the constitutionality of Section 11(b)(1) in *North American Co.* v. *S.E.C.*, 327 U.S. 686 704, note 14 (1946), Section 11 is "the very heart of the title."

[5] *General Public Utilities Corporation*, 32 S.E.C. 807, 839–40 (1951) and cases therein cited; *United Light and Railways Company*, 35 S.E.C. 516, 519 (1954); *Philadelphia Company*, 28 S.E.C. 35, 74–6 (1948). *Cf.* the statement in *North American Co.* v. *S.E.C.*, 327 U.S. 686, 697 (1946), that "other holdings may be retained only if their retention is

related to the *operations* of the retained utility properties." (Emphasis supplied).

[6] In *Engineers Public Service Company*, 12 S.E.C. 41, 72–78, 90–93 (1942), the Commission required divestiture of certain non-utility properties for lack of the necessary functional relationship, but the Court of Appeals for the District of Columbia Circuit reversed, holding that such relationship was not required. *Engineers Public Service Co.* v. *S.E.C.*, 138 F. 2d 936, 946–948 (1943). The Supreme Court granted certiorari, 322 U.S. 723 (1944), but after a voluntary divestment of the properties by the company, the judgment below was vacated for mootness, 332 U.S. 788 (1947). Subsequently in *Philadelphia Co.*, v. *S.E.C.*, *supra*, the Court of Appeals noted its prior opinion and, by its reference to the Supreme Court's opinion in *North American* (noted in the text above) expressed its approval of the functional test.

[7] *Texas Utilities Co.*, 21 S.E.C. 827, 829 (1946).

[8] *The North American Company*, 32 S.E.C. 169, 183 (1950); *Cities Service Power & Light Company*, 14 S.E.C. 28, 29 (1943).

[9] *Philadelphia Company*, 28 S.E.C. 35, 73 (1948); *Cities Service Power & Light Company*, 14 S.E.C. 28, 39 (1943) and cases cited.

[10] It is suggested that the provisions of Section 9(c)(3) permit departure from the standards of Section 11(b)(1) so as to allow as appropriate in the ordinary course of business an acquisition unrelated to the public utility functions of the acquiring company. This construction would permit the acquisition, contrary to the clear Congressional intent, of any security the Commission, in its discretion, stated was in the "ordinary course of business" of the acquiring company. This would permit the Commission to ignore the mandate of the statute and would nullify the carefully drawn provisions of Section 11(b)(1) which restrict registered holding company systems to the operation of public utility properties and other properties operationally related thereto.

[11] This conclusion is confirmed by the fact that Michigan Consolidated contemplates undertaking similar projects of approximately 500 units per year. Such an undertaking necessarily requires the further acquisition of large tracts of land, and, perhaps, the construction of community and shopping or other commercial facilities as permitted under the National Housing Act.

[12] *Consolidated Gas Supply Corporation*, Holding Company Act Release No. 15877 (October 17, 1967). See also *Columbia Gas of Pennsylvania, Inc.*, Holding Company Act Release No. 16078 (May 29, 1968), and *The Peoples Natural Gas Company*, Holding Company Act Release No. 16049 (April 30, 1968). While these last two cases were not specifically issued under Section 9(c)(3), the acquisitions were of the type allowable under that section.

[13] *Michigan Consolidated Gas Company*, Holding Company Act Release No. 16331, concurring statement, page 8, and cases there cited (March 31, 1969).

[14] *Cf. In re Electric Bond & Share Co.*, 113 F. Supp. 547 (U.S.D.C., S.D.N.Y. 1953)

[15] *Electric Bond and Share Company*, 35 S.E.C. 236, 240 (1953), plan enforced, U.S.D.C., S.D.N.Y. (Civ. No. 83–49, July 16, 1953, unreported).

[16] Holding Company Act Release No. 16331 (March 31, 1969).

[17] I agree with the majority's conclusion that the Commission's prior decision did not authorize the projects here involved.

[18] As the Commission said last year (Holding Company Act Release No. 16331, p. 6): ". . . in finding that this investment, so relatively small for Michigan Consolidated and its parent but so relatively important for the community, meets the public interest and relationship standards of Section 11, we would certainly not be authorizing companies under the Act to launch into acquisitions of diverse commercial enterprises, or to commit disproportionate resources to unneeded housing projects, or to abuse their natural monopoly position in non-equity activities" (footnote omitted).

[United States of America before the Securities and Exchange Commission, June 22, 1970, Administrative Proceeding File No. 3–2111]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS CO., MICHIGAN CONSOLIDATED HOMES CORP., DETROIT, MICH. (70–4778), PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, ORDER DENYING PROPOSED ACQUISITION

(Holding Company Act Release No. 16763)

Michigan Consolidated Gas Company ("Michigan Consolidated"), a public-utility subsidiary company of American Natural Gas Company, a registered holding company, and its wholly-owned subsidiary company, Michigan Consolidated Homes Corporation ("Homes Corporation"), a non-utility company, filed an application-declaration and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), and rules thereunder respecting the proposed issue and sale by Homes Corporation, and the acquisition by Michigan Consolidated, of shares of common stock and notes of Homes Corporation.

After appropriate notice, the Commission has considered the record and has this day issued its Findings and Opinion, on the basis of said Findings and Opinion

IT IS ORDERED, that said application-declaration, as amended, be, and it hereby is, denied and not permitted to become effective.

IT IS FURTHER ORDERED that (a) Homes Corporation forthwith divest itself of all its interests in the Inkster, Michigan, project and the Elmswood Park Rehabilitation Project No. 1; and (b) Michigan Consolidated forthwith divest itself of all its interest in Homes Corporation acquired to finance the Inkster, Michigan, project and the Elmswood Park Rehabilitation Project No. 1.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

[United States of America before the Securities and Exchange Commission, August 2, 1970, Administrative Proceeding File No. 3–2111]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS CO., MICHIGAN CONSOLIDATED HOMES CORP., DETROIT, MICH. (70–4778), PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, MEMORANDUM OPINION AND ORDER DENYING MOTION

(Holding Company Act Release No. 16819)

Michigan Consolidated Gas Company, a gas utility subsidiary company of American Natural Gas Company, a registered holding company under the Public Utility Holding Company Act of 1935, and Michigan Consolidated Homes Corporation, a wholly-owned non-utility subsidiary of Michigan Consolidated Gas, filed a motion for an interim order of the Commission authorizing movants to complete the construction and financing of the two housing projects of which they were directed to divest themselves by the Commission's order of June 22, 1970 (Holding Company Act Release No. 16763).

Movants asserted that the requested authorization is a necessary step in implementing the Commission's divestiture order. They argued that divestment of the housing projects is a complicated and time-consuming process and that the authorizations would avoid undue loss and damage to applicants. The Division of Corporate Regulation of the Commission opposed the motion. It argued that the motion sought to have the Commission approve what the Commission expressly decided it has no authority to approve although movants did not suggest that the Commission rescind or amend its order of June 22, 1970.

The Commission after consideration of the matter, agreed with the position of the Division that to grant the motion would be inconsistent with and in derogation of the Commission's prior order, which held that construction and operation of the two housing projects could not be authorized under the Act. This case differs from others where acquisitions were authorized subject to divestiture. In those cases the permitted interim acquisitions related to properties which had been lawfully acquired originally, or to properties whose acquisition was incidental to an authorized acquisition of other properties whose acquisition and retention met the standards of the Act. In this case the properties involved were acquired improperly without the requisite prior approval of the Commission, and have been found to be of a kind whose acquisition is prohibited by the Act.

Accordingly, it is ordered that the motion for interim authorization be, and it hereby is denied.

By the Commission (Chairman Budge and Commissioners Needham and Herlong, with Commissioner Owens concurring), Commissioner Smith dissenting.

ORVAL L. DUBOIS,
Secretary.

Commissioner Owens, concurring:

Movants assert, in effect, that the majority of the Commission in its decision of June 22, 1970 merely ordered a divestiture which can be stayed by the Commission upon a proper showing. That is not the case. The majority determined that the Commission is not statutorily empowered to permit utility holding companies to engage in activities such as those for which Michigan Consolidated sought exemption. While I dissented from the majority opinion of June 22, 1970, I do not believe that the Commission now should permit movants to do indirectly by motion, even on an interim basis, that which the Commission has already determined it has no power to permit them to do directly by exemption. I therefore concur in the denial of the motion.

Commissioner Smith dissenting:

Michigan Consolidated asserts that the requested authorization is a necessary and appropriate step in implementing the Commission's divestiture order. In support it contends that divestment of these housing projects is a complicated and time-consuming process, particularly because they involve Government Housing programs administered by the Federal Housing Administration, and that the requested authorization is necessary both to an orderly implementation of divestiture and to avoid unnecessary loss and damage. If this were shown to be so, and a concrete program adopted for divestment as soon as practicable, I would grant the authorization rather than further penalizing the company and the projects under the Commission's prior order. The Commission has in the past shown a strong sense of practicality in the area of 1935 Act divestiture.[1] In order to consider the motion, I would have required Michigan Consolidated to provide us with a more detailed and specific statement of the items and amounts of asserted loss and damage that would be involved in a divestiture of the two projects without the interim authorization sought.

[1] See, for example, *Louisiana Gas Service Company*, 40 S.E.C. 193, 195, 198–199 (1960); *Pennzoil Company*, Holding Company Act Release No. 15963 (February 7, 1968) p. 13; *Penzoil United, Inc.*, Holding Company Act Release No. 16481 (September 23, 1969) pp. 2–3; *Illinois Power Company*, Holding Company Act Release No. 16574 (January 2, 1970) p. 12.

and also an undertaking detailing the specific steps and time sequences proposed for the prompt divestiture of such projects pursuant to the Commission's prior order assuming the interim authorization were granted.

[United States of America before the Securities and Exchange Commission, September 8, 1970, Administrative Proceeding File No. 3-2444]

IN THE MATTER OF OHIO POWER CO., CAMBRIDGE HOUSING, INC., CANTON, OHIO (70-4881), PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, MEMORANDUM OPINION AND ORDER

(Holding Company Act Release No. 16825)

ACQUISITION OF SECURITIES OF NON-UTILITY COMPANY BY PUBLIC UTILITY SUBSIDIARY COMPANY OF REGISTERED HOLDING COMPANY

Application under Sections 9(a) and 10 of Public Utility Holding Company Act of 1935 for approval of proposed acquisition, by public-utility subsidiary company of registered holding company, of securities of non-utility subsidiary company which proposes to construct low and moderate income housing project pursuant to National Housing Act, *denied*, as not meeting standards of that Act.

Ohio Power Company ("Ohio Power"), a public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, and its wholly-owned subsidiary company, Cambridge Housing, Inc. ("Cambridge Housing"), a nonutility company recently organized under Ohio law, have filed an application-declaration, and amendments thereto, with this Commission pursuant to Sections 6, 7, 9(a)(1), 9(c)(3), 10, 11, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder regarding the following proposed transactions.

Ohio River distributes electric energy at retail in various cities and towns in the State of Ohio, including the City of Cambridge. Cambridge Housing was organized for the purpose of constructing, owning and operating low and moderate income housing projects under Section 236 of the National Housing Act, as amended. As an initial project, Cambridge Housing proposes to construct approximately 100 housing units on twelve acres of land in Cambridge.

Ohio Power proposes to acquire, and Cambridge Housing proposes to issue, up to 500 shares of common stock, par value $1,000, to provide equity capital as required. Cambridge further proposes to obtain funds of up to $2,500,000 for pre-operating and construction expenditures (1) by obtaining construction advances approved by the FHA, (2) by conventional borrowings from local banks (to be guaranteed by Ohio Power if required), or (3) by borrowing from Ohio Power, depending on the availability and attractiveness of each alternative. No approval or consent of any regulatory body, other than this Commission, is necessary for the proposed transactions.

Public notice of the application-declaration was issued (Holding Company Act Release No. 16813), pursuant to which interested persons were given an opportunity to request a hearing. No hearing has been requested or ordered, and Ohio Power has agreed that we may consider the matter on the basis of the record as it now stands.

In light of our decision in *Michigan Consolidated Homes Corporation* on June 22, 1970 (Holding Company Act Release No. 16763), we must deny the application-declaration. The housing project, which in all relevant respects is identical with that proposed by Michigan Consolidated, lacks the operating or functional relationship required by Section 10(c)(1), which incorporates Section 11(b)(1), between such a nonutility business and the operations of an integrated public-utility system. Nor, for reasons there stated, may we exempt the acquisitions under the provisions of Section 9(c)(3) of the Act. We have also denied a similar application in *Mississippi Power & Light Company*, Holding Company Act Release No. 16814 (August 20, 1970).

It is ordered, accordingly, that said application-declaration, as amended, be, and it hereby is, denied and not permitted to become effective.

By the Commission (Chairman Budge and Commissioners Needham and Herlong).

ORVAL L. DUBOIS,
Secretary.

Commissioner Owens, concurring in part and dissenting in part:

I reiterate my opinion as expressed in the *Michigan Consolidated* and *Mississippi Power & Light Company* proceedings (Holding Company Act Release Nos. 16331, 16763, and 16814, respectively). I concur in finding that Sections 10(c)(1) and 11(b)(1) do not permit a public utility holding company registered under the Act or a subsidiary company thereof to engage in the housing business. I feel, however, that the factual situation presented by Ohio Power's application closely parallels the facts in the *Michigan Consolidated* and *Mississippi Power & Light* proceedings, and am of the opinion that, under these special circumstances, an exemption under Section 9(c)(3) is justified. I, therefore, would approve this application pursuant to Section 9(c)(3).

Commissioner Smith, dissenting:

I adhere to the views I expressed in the *Michigan Consolidated* and *Mississippi Power & Light* proceedings and I would approve the application.

EQUAL EDUCATIONAL OPPORTUNITY

Mr. McCLELLAN. Mr. President, today I placed a statement in the hearing record of the Select Committee on Equal Educational Opportunity. This statement primarily concerned the segregated status of the Boston public schools—a status which present and past administrations have failed to challenge.

This statement contained many supporting exhibits, among them a letter from Mr. Stanley Pottinger, head of the Office for Civil Rights of the Department of Health, Education, and Welfare. Mr. Pottinger's letter related a 46-percent increase in segregated schools in Boston. This, of course, occurred during the period that Southern schools were being forced to integrate and the South and southern politicians were being chastised for bigotry and racism. The figures shown in this statement and these exhibits show unquestionably that if school segregation results from a sole causal factor of bigotry and racism, the cities of Boston, Detroit, and Chicago are at least as possessed of those qualities as any Southern State. In addition, the officials and citizens of these cities have not demonstrated the same quality of honesty and straightforwardness that the South has shown on this issue. Indeed, the North has been accused by many of hypocrisy, and by a northern Senator of "monumental hypocrisy." The facts in Boston are not new. Bigotry and racism have been prevalent and detailed in that city for several years. In October, 1967, "Death At An Early Age," written by Jonathan Kozol, was published. This book was a winner of the national book award and has received wide publicity.

I cannot, at this time, go into more detail as to its contents, but I will state that therein the open enrollment, or freedom-of-choice policy, was deplored as a Boston method of achieving segregation. Teachers in the Boston schools were quoted as referring to a ghetto school as a zoo, and the pupils thereof as animals. The debate then was whether Boston should integrate in the same manner and to the same degree as many of its young citizens pressed upon the South in their frequent promotion of civil disturbances in the South. According to Mr. Kozol, a few Boston citizens at mass meetings in 1965, "did not hesitate to draw a line of similarity between the events that were then taking place in Alabama and the less bloody but, in the long run, no less destructive processes of injustice that were being carried out within the Boston public schools." The statement which I made today, before the Select Committee illustrates the extent to which the citizens of Boston ignored and promoted racial injustice in Boston while simultaneously berating the South

Mr. President, the statement I made today before the Select Committee clearly and unequivocally shows that our Government has been and still is pursuing a double standard—a dual policy—with reference to enforced integration in our public school system. It enforces integration; it forces integration in the South by injunctive relief, by other court actions, and by invoking sanctions (withholding Federal aid to schools in the South) while ignoring, tolerating, and condoning school segregation in the North. Mr. President, this dual policy is a serious reproach to the integrity of our Government.

Mr. President, I ask unanimous consent that the text of my statement and the additional material be placed in the RECORD.

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

MONUMENTAL HYPOCRISY: BOSTON, MASS.

In the debates on the Senate floor leading to the establishment of this Committee, the charge was made that the North was guilty of "monumental hypocrisy" in its efforts to force integration upon the South, while the North became increasingly segregated. In defense to these charges of monumental hypocrisy, the question was asked of the South, "What about the continuing efforts to evade the constitutional mandate with 'freedom of choice' and similar plans?" [1] At this point in the hearing record we are confronted with "freedom of choice plans," better known in Boston, Massachusetts, as the "open-enrollment policy."

In August of 1965, Boston, Massachusetts, enacted a Racial Imbalance Act. The law provides for elimination of racial imbalance in the Boston school system. The remedy for failure to eliminate imbalance is that the Commissioner of Education must refuse to certify all State aid for that system. This requirement is unique in the 50 States. Under that law, the State Board of Education voted unanimously to withdraw aid from the Boston school system in 1966. Insofar as I have been able to determine aid was never terminated.

Boston also has a number of programs which have received wide publicity, designed to produce integration between minority groups and suburban students.

Footnotes at end of article.

That is the facade. That is the image of Massachusetts and of Boston—the city often represented as the cradle of American liberty, which has ostensibly taken great strides to exercise leadership in the nation in the field of quality integrated education. In hearings before the Education Subcommittee of the Senate Committee on Labor and Public Welfare, Boston was pictured in terms of its unique racial imbalance law and its progressive integration programs as well as its open-enrollment policy. The question was then posed as to the net result of these programs.[2]

Let us now look at the realities prevailing in the North and Massachusetts in general and then Boston in particular.

During the Senate debates leading to the establishment of this Committee, another question was asked of the South—"What about the monumental hypocrisy of trying to find some way to develop private schools, or to close the public schools, made by Governors of states, somehow to avoid the constitutional mandate of equal educational opportunity?"[3] The latest available statistics show that the State of New York has 816,600 students in private schools whereas the entire eleven southern states have only 569,700 such students.[4] Massachusetts has done much better in this regard, it only has 234,300 in private schools. This does not, of course, exceed the eleven southern states; it only exceeds by 20,000 students the combined private school populations of Alabama, Arkansas, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

What has happened in the City of Boston in response to its much touted drive to achieve quality integrated equal educational opportunity? According to the Department of Health, Education, and Welfare, Boston had 198 schools in 1966. Of these 198 schools, 47 contained more than 50 per cent non-Whites. In 1969, Boston operated 199 schools. Of these 199 schools, 70 contained more than 50 per cent non-Whites. Thus Boston has increased its predominantly minority group schools by 46 per cent while simultaneously publicizing its attempts to provide quality integrated education. In addition, Boston has now achieved 48 schools with more than 80 per cent minority group students. This is the net result of Boston integration "efforts."[5]

There reportedly is a great deal of transportation to achieve integration in the Boston area, but it should be noted that generally the school does not pay for the transportation, and students are allowed to transfer to schools outside the Boston school district. Although this has been touted in connection with inner-city Blacks attending suburban schools, the only group which, generally speaking, can internally finance transfer of its children to schools outside Boston is White, his "White flight" reportedly is what made the Solomon Lewenberg school a 95 per cent Black school.[6] It should also be noted that Massachusetts General Laws Annotated, Chapter 71, Section 37D, provides that "no school committee or regional school district committee shall be required as part of its plan to transport any pupil to any school outside its jurisdiction or to any school outside the school district established for his neighborhood, if the parent or guardian of such pupil files written objection thereto with such school committee." Thus the neighborhood school is preserved for those who want it—in Boston.

We have heard much concerning the necessity of faculty desegregation in the South, and of the injustices perpetrated when Black teachers lose their positions due to elimination of need for teachers in many instances when schools are merged. These Black teachers who seem to be surplus may wish to know that Boston is in great need of Negro teachers. Boston has only 5 per cent Negro teachers and 28.7 per cent Negro students.[7] If the law is enforced equally across the United States there obviously is a great need for Black teachers in Boston.

I now turn to examination of the legal response, both from Federal and State authorities. As indicated in the hearing, this matter came to my attention through the testimony of Neil Sullivan, Commissioner of Education in Boston, Massachusetts. In view of the facts as they have developed, I am extremely curious as to the reasons for which the Commonwealh of Massachusetts has declined to take action to implement its own laws.[8] Boston and Massachusetts officials have watched Boston segregate, with legally sanctioned freedom of choice as a prime tool to achieve their segregation. They have established racially identifiable schools in Boston. The State Commissioner of Education has complained of this policy to our Committee; yet the State, whatever its actions may have been under its law, has only achieved increased segregation in Boston. Federal officials did not bring Boston to the Committee's attention—indeed they apparently did not bother to brief the Attorney General on the Boston situation before his appearance on August 13.

Lest I be misunderstood, I state that this is not a partisan attack on the Republican Administration. They have only been in office since 1969. Segregation caused by legal action in Boston has been apparent and in controversy at least since 1966. State officials have not enforced State laws. Former Justice, and Health, Education, and Welfare officials have not enforced the Federal law in Boston.

The facts requiring action in this case are clear. They were specifically called to the attention of the Civil Rights Division (in the Department of Justice) in December 1969.[9] The response, on January 16, 1970, was that a parent must complain.[10] Such a parental letter was forwarded to the Justice Department on January 22, 1970.[11] It is now September 1970, and no action, other than some kind of an abbreviated investigation, has been slowly taken. I call upon the Administration to explain why its efforts in the North are not at least as vigorous and forceful as is its efforts in the South. Common northern excuses are that the South has had seventeen years to correct their racial problems and the North also should have seventeen years. My answer is that they have had those same seventeen years. In addition, Boston has been in court as early as 1966. They have declined to correct the situation, and indeed have worsened it. Both the Attorney General and Secretary Richardson are publicly committed to enforcing the law nationwide. Is it not time to take action in the North where these flagrant violations are known to exist? They have had eight months to investigate a situation in Boston which would be, under their interpretation of the law, clearly illegal in the South. As we all know, action would long since have been taken if the Boston events had occurred anywhere in the South. We can be sure that no federal funds would be available to any southern city for the 1970 school year, if that city had actively proposed segregation and refused to correct the condition as is the case in Boston.

At this point I wish to turn to a concrete example of the discrimination being practiced against the South. I recently received a letter dated August 20, 1970, from three citizens of McCrory, Arkansas. These citizens live in a farming community very close to McCrory. Because of historical factors not relevant to the present controversy, children of this community attended the schools of an adjacent district, Cotton Plant, rather than the McCrory schools. They receive their mail from McCrory and their telephones are connected with the McCrory exchange. All of their trade is done through McCrory. The children of this community obtained the consent of all necessary local officials in both the McCrory and the Cotton Plant schools to attend school in the McCrory district. McCrory is integrated, as is Cotton Plant, although Cotton Plant apparently has a higher percentage of Black pupils. Due to objections voiced by the Department of Health, Education, and Welfare, McCrory officials reversed their decision and these children will not be allowed to attend the McCrory schools. Let us contrast the situation in McCrory with that in Massachusetts.

Massachusetts General Laws Annotated, Chapter 76, Section 12B, provides ". . . any child may attend the public school where he does not reside upon such terms as the school committee of such town where he does not reside shall fix; . . ." Thus, in Boston, students may transfer not only from one high school to another in the City, they also have legislative approval for transfer out of Boston to the suburbs. I have previously given the figures supplied by HEW which indicate the degree to which Boston has segregated over the past three years. The exhibits reflect the belief of concerned Boston citizens that the open-enrollment policies have substantially increased the degree of segregation in Boston. Mr. Pottinger's letter reflects the opinion of HEW that the open-enrollment policy played a large part in the segregation of the Lewenberg High School. The facts I have related to this point are indeed, to me, astonishing. I had thought that surely the legions of Massachusetts citizens and representatives who preached the value of integration were consistent. Yet I find, to the contrary, that even as they preached Southern integration, they were segregating their own society.

According to *Boston Herald Traveler* and *Boston Globe* reports of allegations made by a mother whose child attends the Lewenberg Junior High School, the situation is even worse than presently set out. This mother testified that conditions in the Lewenberg High School, brought about by open enrollment, were "pure bedlam."[12]

In an effort to remove her child from this place of bedlam, she moved out of the Lewenberg district and attempted to send her child to the Washington Irving School ten blocks from her home. She was refused permission to transfer her child to the district in which she resided, and was forced to send her child back to the Lewenberg school because there were vacancies there and Washington Irving was crowded. We all know why there were vacancies at Lewenberg—Boston officials had aided Whites to leave Lewenberg, thus creating the vacancies. Here we have a concrete example of northern action, as opposed to northern talk. No matter how many meaningless laws are on the Massachusetts books, no matter how many Massachusetts leaders praise the virtue of integration, the deeds in Massachusetts, sadly, repudiate and violate the law, and in the Black mother's case, tragically, imposes and enforces a rank injustice.

While the citizens in Arkansas who wish to attend a school in the town with which they are connected in every way are denied that right, the city of Boston, Massachusetts, not only allows transfers, they then force Black children back into the ghetto schools from which the Whites have been allowed to transfer.

Mr. Pottinger also reported on the situation in Detroit, where the Administration has taken no action.[13] The NAACP has filed suit in Detroit pointing out that "a northern legislature has adopted the judicially discredited southern tactic of interposition and nullification (commonly known as State's rights) . . ."[14]

Not mentioned in the newspaper article is the adoption of a freedom of choice plan by the same Michigan legislature. Children in

Footnotes at end of article.

Detroit are now free to attend schools of their choice in addition to initially attending schools established by legislatively gerrymandered attendance zones. Southern children may not do these things. The NAACP has filed suit based on the belief that the Constitution applies equally in the North and in the South. The Administration has not filed suit in either Boston or Detroit. Why? Does not the Constitution apply equally to all the States—North and South? In theory it does. In practice however, it is not so applied.

One final commentary on equal application of the laws. I have a letter dated August 28, 1970, from Jerris Leonard, Assistant Attorney General Civil Rights Division,[15] in respect to an inquiry contained in a letter from me dated August 26, 1970.[16] In my letter I inquired into Administration policy on hiring and firing of Black teachers. In response, Mr. Leonard quoted to me a portion of a 1969, 5th Circuit, decision. Therein it was stated:

"1. Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969–70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments."

I am sure we all recall, during the previous Administration, the controversy surrounding the Chicago schools refusal to integrate teaching staffs or to assign teachers to different schools in accordance with Federal policy existing in the South by court decree and Administrative guidelines. According to the August 13, 1970, Chicago Sun Times,[17] Chicago has been highly successful in continuing its segregated faculty while the Department of HEW continues to complain loudly and slap the Chicago wrist. In 1969 the Justice Department threatened to sue. It is now getting late in 1970 and Justice is still threatening to sue, but has not yet done so. Why is there no such suit? I can draw no conclusion except the obvious one—that there is one integration law for the South and another integration law for the rest of the country. If there are those who wonder why there is a virulent third party movement in the South, I submit that the facts contained in this statement are most conducive to it. Both Democratic and Republican administrations have consciously followed a program of forcing integration in the South to an extent apparently not tolerable in the rest of the country. Both parties have been captured by groups which scream for Southern integration, yet refuse to integrate their own states. This is a situation—a double standard—which no elected representative of a Southern state can contemplate with less than undisguised disgust for such "monumental hypocrisy."

FOOTNOTES

[1] Omitted.
[2] Omitted.
[3] Omitted.
[4] Digest of Educational Statistics, pp. 30, 31 (OE–10024–69).
[5] Letter from Stanley Pottinger to Sen. McClellan, see Ex. 2.
[6] Testimony of Neil Sullivan, Transcript, page 849–850. See also Ex. 3, 4, 5, 6, 7 and 8, correspondence of Allan Cohen.
[7] Stanley Pottinger letter, Ex. 2.
[8] Ex. 11, excerpt from Civil Rights Commission Report, "Racial Isolation in the Public Schools."
[9] Ex. 6.
[10] Ex. 7.
[11] Ex. 8.
[12] Ex. 12, *Boston Herald Traveler, Boston Globe*, Friday, August 21, 1970.
[13] Ex. 2, page 2.
[14] Ex. 13, *Detroit News*, August 19, 1970.
[15] Ex. 15, Letter to Sen. McClellan from Jerris Leonard, Assistant Attorney General, Civil Rights Division, dated August 28, 1970.
[16] Ex. 14, Letter to Jerris Leonard, Assistant Attorney General, Civil Rights Division, dated August 26, 1970.
[17] Ex. 16.

DEPARTMENT OF JUSTICE,
Washington, August 24, 1970.

Hon. JOHN MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I would like to thank you for drawing my attention to the fact that the Justice Department may have been in error with reference to the Boston School situation, mentioned at pages 2239–2242 of the hearings before the Select Committee on Equal Educational Opportunity.

Upon reviewing our Boston, Massachusetts file, I have ascertained that we did receive a complaint pertaining to the situation you mentioned.

Pursuant to our normal procedures we deferred our investigation, as the Office of Civil Rights of Health, Education and Welfare had received an identical complaint, and that office was already investigating the matter.

The Office of Civil Rights has completed a preliminary investigation, and we have made arrangements with them to obtain a copy of their investigation.

If our review of the investigation indicates that further action is warranted, we will take such action as is necessary.

I would appreciate it if the hearing's record were corrected to reflect; that we did receive a complaint; that HEW received an identical complaint, and investigated the complaint; and that the Justice Department has made arrangements to review their investigation, and take such further action as is warranted.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General, Civil Rights Division.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., August 28, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: This is in response to your request for the current status of Office for Civil Rights activity with respect to the school systems of Boston, Massachusetts; Detroit, Michigan; and New York, New York.

BOSTON

In January, 1970, a complaint was received by Washington OCR that the "open enrollment" student assignment policy of the Boston, Massachusetts school district has resulted in the segregation of black students at the Solomon Lewenburg Junior High School. Upon receipt of the complaint arrangements were made to meet with the Boston Superintendent, and a preliminary investigation was conducted by representatives from OCR's Washington and Boston regional offices on February 2–7, 1970.

Since enactment in 1965 of the Massachusetts Act for the elimination of racial imbalance in the public schools, Boston has entered a long-range program with the stated intention of ensuring that no school has a majority non-white student body, and with the goal of eliminating "a ratio between non-white and other students in public schools which is sharply out of balance with the racial composition of the society in which non-white children study, serve, and work" (statutory language). The main features of this program are a large scale construction program designed to locate schools so as to maximize integration and the open enrollment policy. In addition, a number of non-white children attend public schools outside the Boston district at their own expense but with cooperation of the district officials.

The open enrollment policy provides:

(a) Open enrollment is applicable if the following three conditions are fulfilled:

1. There is an available seat in the desired school.

2. There is a suitable grade and/or course of study in that school.

3. Transportation is provided by the parent.

(b) The principal makes arrangements for the transfer. Information on seat vacancies in the schools is periodically distributed through all communications media.

These measures have not resulted in the correction of the overall imbalance in the district. During 1969–70, Boston operated 199 schools, of which 70 had more than 50% minority students and 48 more than 80%. This compares with 47 schools containing more than 50% non-whites of a total of 198 schools in 1966–67. In addition, for 1969–70 there were 27,276 Negroes (28.7%) of a total 94,887 students, but only 226 Negroes (5%) of a total 4,495 teachers. The district also had 3,205 students of various Spanish language origins and 1,643 Orientals.

Because of the diversion of resources needed to fully investigate so large a district, it was decided to concentrate on the Lewenberg Junior High School. In 1966–67 the racial student enrollment was 736 whites and 384 Negroes. In 1969–70 the enrollment was 633 Negroes, 23 other minorities, and 78 whites. In discussions with the Superintendent he alleged that the change was the result of the open enrollment policy. The investigative team visited the school and confirmed that open enrollment was the cause, in conjunction with a substantial change in neighborhood racial residence patterns. While the team noted many educational deficiences at the school, no comparison was made with a representative sample of other Boston schools, so no conclusions can yet be drawn.

The investigative team has recommended a full scale investigation of the Boston public school system's compliance with Title VI of the Civil Rights Act of 1964. At the present time the preliminary report is being studied by the Office of the General Counsel, and a final recommendation to the Director is anticipated within 30 days.

DETROIT

On July 7, 1970, the State of Michigan enacted a measure which in effect defeated a program of school integration in the Detroit Public Schools. Detroit has adopted a system of high school regions beginning September 16, 1970, in response to an act of the state legislature which, as a by-product, would have for the first time largely integrated the high school student bodies.

However, by a 1970 amendment to the act establishing compact neighborhood zones drawn by a commission appointed by the governor, the school board plan was cancelled and the segregated nature of the schools has allegedly been reinforced.

OCR has communicated with various Detroit school officials since passage of the recent amendment. Detroit has been requested to supply more complete details with regard to student assignment policies and results, past, present, and future. This information has not yet been received.

On August 17, 1970, the NAACP (not Legal

Defense Fund) filed suit in the U.S. District Court for the Eastern District of Michigan (Detroit) seeking to prevent implementation of the State statute as it affects Detroit's school integration, and also seeking complete implementation of the plan in September, 1970, rather than gradually as proposed. A hearing on a motion for preliminary injunction has been set for August 28, 1970.

NEW YORK

In May 1970 the Regional Director of the Office for Civil Rights received complaints from two sources concerning alleged discrimination in the drawing of community district lines within the New York City school district. The district lines are in the Harlem area of upper Manhattan, the Lower East Side of Manhattan, and Oceanhills Brownsville in Brooklyn.

Representatives of the Office met with complainants on June 1 at which time it appeared that the district lines did not affect the assignment of students to schools since without exception school attendance areas were used in fact to make up districts. The OCR Regional Director believed it necessary, however, to obtain further information and accordingly requested a meeting with the city wide school board. That meeting was held on August 25, attended by four of the five board members, the acting chancellor and other staff of the board. The board denied that there was any valid basis for charges of discrimination including intervening charges which alleged that qualifying examinations hampered the recruitment of teachers from minority groups.

The HEW representatives requested various types of information from the board. The board indicated that it would assemble the information and designate a staff member to serve as contact with HEW to supply such additional information as may be needed.

I appreciated the opportunity to discuss school desegregation matters with you on August 21. If we can be of any further assistance, please let me know.

Sincerely yours,

J. STANLEY POTTINGER,
Director, Office for Civil Rights.

BOSTON, MASS.,
August 14, 1970.

Senator JOHN L. MCCLELLAN,
Senate Select Committee on Equal Educational Opportunities U.S. Senate, Washington, D.C.

DEAR SENATOR: I believe I have vital information to give your committee in regards to Attorney General John Mitchell's testimony of last Thursday. At that time he stated that the Justice Department have never received a complaint about Boston's segregationist open enrollment policy. As a teacher and project coordinator at the Lewenberg Junior High School community advisory board in Boston, I filed a complaint with the Justice Department last December 29th and they responded to it. I have all correspondence for your worthy investigation and I am available as well as my files if it will be useful to your committee.

ALLAN S. COHEN.

PRESS RELEASE

In response to an article in this morning's Boston Globe wherein U.S. Attorney General Mitchell stated, while appearing before the Senate's Select Committee on Equal Education Opportunity, that his office has never received a complaint about the open enrollment policy as it exists in the Boston School System, I wish to publically state that the Attorney General was very much in error in making such a statement.

As Project Co-ordinator of the School Community Advisory Board at the Solomon Lewenberg Junior High School in Mattapan on December 29, 1969, I sent letters to both the Civil Rights Division of the Justice Department and the Office for Civil Rights for the Department of Health, Education, and Welfare stating that on behalf of the Advisory Board I wished to request an investigation into the Racial Imbalance Law and the Open Enrollment Policy as it existed in Boston. I stated in those letters that under the Open Enrollment Policy the Solomon Lewenberg Junior High had gone from 5% black enrollment in 1965 to 95% black enrollment in 1969.

I received a reply from the Justice Department on January 16, 1970 confirming my request for an investigation and advising me that before such an investigation could be made an official complaint from "a parent or group of parents to the effect that his or their minor children are being deprived by a school board of the equal protection of the laws."

A letter was sent to the Justice Department conforming to their request on January 22, 1970 and signed by six (6) such interested parents.

To date, I nor the Advisory Board has received a reply to this formal complaint that the Attorney General claims was never made.

I have copies of all the correspondence mentioned above and will make the same public except for the names of those parents who signed the requested complaint.

It should be made known that the Department of HEW did respond to our request by sending a three (3) man investigating team to the Solomon Lewenberg Junior High during the last week of January and first part of February, 1970.

I would further wish to state that it is quite disheartening when the Attorney General of the United States publicly errs on such an important issue as the one at hand.

HYDE PARK, MASS.,
August 19, 1970.

Senator JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Thank you for your prompt reply. Enclosed are copies of the Boston Globe news articles which preceded the press release; the Record American, Herald Traveler, and Boston Globe articles which followed the release; all correspondence to both the Civil Rights Division of the Justice Department and the Office for Civil Rights of Health, Education and Welfare; and a copy of the January 14, 1970 Herald Traveler article announcing the Justice Department complaint made by us.

As noted in the press release that I sent you, the Office for Civil Rights of Health, Education and Welfare did send a team of investigators headed by Mr. Walter J. Patterson, Office for Civil Rights, U.S. Department of Health, Education and Welfare, 7th and D Streets, S.W., Room 3636, Washington, D.C. He, Mr. Horn from the New York Civil Rights Office, and Mr. John Bynoe from the Boston Civil Rights Office visited the school, speaking with faculty, students and parents.

Mr. Patterson seemed very concerned, but as of this date his report has not been released. It would be greatly appreciated and a benefit to all that this report be released immediately; if not publicly, at least to those making the complaint.

I am looking forward to your action on this matter, and as stated before, will be available to you and the Senate Select Committee on Equal Education Opportunity. Thank you again for your concern. Hopefully the problems facing the Lewenberg and all Boston schools can be improved.

Sincerely yours,

ALLAN S. COHEN,
Project Co-ordinator, Solomon Lewenberg Junior High School Community Advisory Board.

SOLOMON LEWENBERG JUNIOR HIGH,
Mattapan, Mass., December 29, 1969.

Mr. GERRIS LEONARD,
Director, Civil Rights Division, Justice Department, Washington, D.C.

DEAR MR. LEONARD: On behalf of the Solomon Lewenberg Junior High School Community Advisory Board, we would like to request an investigation by your department into the Racial Imbalance Law of the State of Massachusetts and the Open Enrollment Policy of the Boston School System.

Under this State Law and School Department Policy the Lewenberg Junior High has undergone a change from 95% white student enrollment in 1965 to over 95% black student enrollment today. As parents, students, and teachers on the Advisory Board we wish the best education for all. We believe this can be best achieved through integrated education.

We would like to know the rationale of this law and policy and if possible to have a member of your department meet with us to discuss the problems created by this State Law and School Department Policy at the Lewenberg.

Sincerely,

ALLAN S. COHEN,
Project Co-ordinator.

SOLOMON LEWENBERG JUNIOR HIGH,
Mattapan, Mass., January 22, 1970.

Re JL:CKH:sec DJ 169-36-1 #20-025-7.

Mr. CHARLES K. HOWARD, Jr.
Attorney Education Section,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. HOWARD: In reply to your letter of January 16, to Mr. Cohen, the Advisory Board project co-ordinator, we are pleased with your interest.

As parents who have children at the Lewenberg Junior High, we wish a good education for our children and hope it will be an integrated one.

The Lewenberg being a part of the Boston School Department come under the Open Enrollment Policy instituted by the Boston School System. Under this policy any child may enter any school district in which there is a vacant seat.

The Lewenberg has enrolled many out of district students from schools that are predominately black; at the same time many white pupils have transferred under the Open Enrollment Policy to overcrowded predominately white schools. Therefore, we feel that the present Open Enrollment policy defeats the Racial Imbalance Law of the State of Massachusetts and its goal of an integrated education.

Sincerely,

———— ————.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., January 16, 1970.

Mr. ALLAN S. COHEN,
Project Co-ordinator, Solomon Lewenberg Junior High School Community Advisory Board, Mattapan, Mass.

DEAR MR. COHEN: This is in response to your letter of December 29, 1969, concerning the racial change in Lewenberg Junior High since 1965, the Racial Imbalance Law of the State of Massachusetts, and the Open Enrollment Policy of the Boston School System.

In order for the Department of Justice to conduct an investigation into possible violations of Title IV of the 1964 Civil Rights Act (Desegregation of Public Education) it is necessary that we have a complaint in writing "signed by a parent or group of parents to the effect that his or their minor children . . . are being deprived by a school board of the equal protection of the laws."

It would seem that the racial change at Lewenberg Junior High School since 1965

might well fall into the equal protection qualification if subsequent investigation proves racial considerations have contributed to this change. At any rate we are unable to tell from your letter whether or not you are a parent of a child attending school in the involved school system or whether perhaps another member of the Committee who is a parent should write us also.

We would also appreciate any other details at your disposal to assist us in determining what action is appropriate. Particularly, we would appreciate a more detailed description of the problem you describe in your letter and the identity of the school department to which you refer.

Thank you very much for bringing this matter to our attention.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General, Civil Rights Division.

By: CHARLES K. HOWARD, Jr.,
Attorney, Education Section.

[From the Boston (Mass.) Herald Traveler, Aug. 15, 1970]

WARNER, HICKS DEFEND OPEN SCHOOL ENROLLMENT

Director John D. Warner of the Boston Redevelopment Authority and City Councilman Mrs. Louise Day Hicks yesterday defended Boston's open enrollment school policy in the wake of a statement by U.S. Atty. Gen. John N. Mitchell that it was illegal.

Warner also criticize State Education Commissioner Neil Sullivan for what he said was Sullivan's failure to speed up a study of possible revisions to the Massachusetts racial imbalance law.

Mitchell's remark was made Thursday in testimony before the Senate's Select Committee on Equal Educational Opportunity. In an appearance before the committee in May, Sullivan had described the open enrollment plan, which permits Boston parents to enroll their children in any city school they choose.

Mrs. Hicks said yesterday, "Boston's open enrollment policy has not been declared unconstitutional in a court of law. Boston's open enrollment policy enables a student to attend any public school in Boston on a completely free and voluntary basis provided, of course, there is a seat available and that an appropriate course of study is in operation.

"Boston has judiciously attempted to obey both state and federal laws and fortunately there still exists in our great country a judicial system," continued Mrs. Hicks. "Citizens are not dependent upon unwarranted, unproven statements of constitutional officers who should know better."

Sullivan, in his remarks before the Senate committee, said the open enrollment policy was responsible for turning the Solomon Lewenberg School in Mattapan from a predominately white school to an almost completely black school.

Sullivan said the plan "permitted the mobile-class children to escape from the school, continue to live in their community, but go to all-white schools in Boston on the periphery."

Warner denied this, saying "The Lewenberg school is black because whites have left that section of the city."

Robert Smith, public information officer of the Civil Rights Division of the Dept. of Health, Education, and Welfare, said yesterday the HEW general counsel is considering whether the open enrollment policy constitutes a violation of the 1964 civil rights act, and, if there has, whether it would come under the jurisdiction of HEW or the Justice Dept.

Allen Cohen, a teacher at the Lewenberg School, said he had sent a complaint to Atty. Charles K. Howard of the Justice Dept. Dec. 29 of last year, and said it was possible that Howard turned the complaint over to HEW.

Warner, in an afternoon press conference, said the state's racial imbalance law, which requires that every school be at least 50 per cent white, is adversely affecting Boston's school construction program.

"The city of Boston is not months or days away from a very critical situation insofar as the planning of our school construction program is concerned," Warner said.

"We are now, today, being forced into making unsound planning decisions with respect to the location of new schools, all in a frantic and, at this time, foolish effort to comply with the patently unworkable provisions of the racial imbalance law."

He denied a link between open enrollment and racial imbalance. Sullivan's remarks, he said, were "unbelievably unfair" to the citizens of Boston and showed "shocking unawareness" of the history of the open enrollment policy in Boston schools.

"An inaccurate and unjust appraisal of Boston's efforts to solve the problem of racial imbalance has now been given not only to the Congress but to the nation," Warner said.

He urged Sullivan to move "as swiftly as possible" to permit filing of legislation changing the Racial Imbalance law.

"The law may be great in Pride's Crossing or Beverly Farms, but it doesn't work as far as the city goes," said Warner.

Asked if Mrs. Hicks had been right in her opposition to the Racial Imbalance law before its enactment in 1968, Warner said, "Yes, for the wrong reasons."

Mayor Kevin H. White yesterday reaffirmed his long-standing position that the Racial Imbalance law was in principle sound but unworkable because of the 50 per cent clause.

He also urged a quick study of possible amending legislation.

Warner said a prime example of the harm being done by the law is the necessity to close the Prince School, in the Back Bay, in order to provide white children to racially balance the new Carter School in the South End, due to open in two years.

The Prince School, on Newbury Street, is racially mixed. One of Warner's children is enrolled there.

Warner said the closing of the Prince School would be deleterious in the neighborhood concept of the Back Bay.

"Does the Back Bay remain a neighborhood or become a commercial, transient area?" he said. "A neighborhood has to have a neighborhood school."

The closing of the Prince School, he said, "would have a disastrous effect on the Back Bay as a neighborhood. Families would move out rather than send their kids that far away (to the Carter School). Or they would put their children in private schools."

(From the Boston (Mass.) Record American, Aug. 15, 1970)

WARNER HITS SCHOOL BOSS SULLIVAN

Boston Redevelopment Director John D. Warner yesterday accused State Education Comr. Neil Sullivan of giving "inaccurate, unjust and unfair" testimony in Washington about Boston's racial problems.

Warner angrily charged that Sullivan's testimony to the U.S. Senate Select Committee on Equal Educational Opportunity was "such a distortion of the Boston school situation that it will make the entire problem much more difficult to solve."

The head-on collision of Sullivan and Warner pointed up a quarrel of long standing over what should be done to ease racial tensions in the Boston school system.

Warner said the state's present racial imbalance law is unworkable and that "frantic" and "foolish" attempts to comply with it is driving the city to a crisis in trying to plan for school construction.

The smouldering issue flared up again after Atty. General John Mitchell said that Boston's open enrollment school policy is unconstitutional and allows segregation through city policy.

Mitchell was appearing before the Senate subcommittee when he got into a verbal tussle with Sen. John L. McClellan (D-Ark.). McClellan was attempting to make the point that the administration sends federal agents to the South to enforce desegregation but allows segregation to flourish in the North.

McClellan quoted testimony given on May 21 by Comr. Sullivan who said that the events at the Lewenberg Junior High School in Roxbury was typical of the actual results of the city's open enrollment policy.

Sullivan said the school was almost completely white but that shortly after a few black students moved in the white students moved out and that the school is now 95 percent black.

McClellan demanded to know whether that situation was constitutional and Mitchell answered, "No, sir."

"What are young going to do about it?" McClellan asked. "We have never had a complaint," Mitchell answered.

This statement was challenged by Allan Cohen, a project coordinator for the Community Advisory Board of the Lewenberg School.

Cohen said Mitchell was in error in saying he never received a complaint and that he had sent a letter on Dec. 29, 1969, to the Justice Dept., asking an investigation of the racial imbalance law and open enrollment as it exists in Boston.

EXCERPT FROM RACIAL ISOLATION IN THE PUBLIC SCHOOLS, A REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS

D. IMPLEMENTATION

The Massachusetts policy is supported by the strongest enforcement powers. In August 1965, the Massachusetts Legislature enacted a Racial Imbalance Act, which provides that upon notification by the State Board that a school within its system is racially imbalanced, a school committee must prepare and file with the board a plan to eliminate the imbalance. If the committee fails to show progress within a reasonable time in eliminating racial imbalance in its school system, the Commissioner of Education must refuse to certify all State school aid for that system.

Massachusetts is the only State which requires, either by law or administrative regulation, that State educational funds be withheld from school systems operating racially imbalanced schools.

MOTHER HITS "BEDLAM" AT MATTAPAN SCHOOL

A Mattapan mother said yesterday at an anti-discrimination hearing that Lewenberg Junior High School in Mattapan was a place of "pure bedlam."

Mrs. Barbara Harrison of Clarkwood Street, told members of the Massachusetts Commission Against Discrimination (MCAD) "that she would rather teach her daughter herself than send her to Lewenberg school."

Mrs. Harrison brought a discrimination complaint against the Boston School Department, charging that her daughter Donna, was assigned to a 6th grade classroom at Lewenberg "because she is black."

Mrs. Harrison wants her child to attend Washington Irving school in Roslindale.

"I'll keep her home and teach her myself. I feel I can do a much better teaching job than she receives at Lewenberg," Mrs. Harrison testified. "There's pure bedlam going on there."

She testified that some teachers at Lewenberg scream at the pupils and others announce, "I don't feel like teaching today,"

and allow the students to take over the classroom.

Mrs. Harrison said teachers at the school advised her: "Take your daughter out, she doesn't belong here."

Anthony Galeota, school department engineer, outlined the school construction program designed to eliminate racial imbalance in Boston schools.

He said 14,000 non-whites, including 12,000 blacks, attended Boston elementary schools.

Mrs. Harrison's attorney, Steven Cohen, told the commission members "the number of schools built is irrelevant, the point is a child has been denied admission to a school because she is black."

Asst. Corporation Counsel Edith Fine told the commission that the Boston School Department had an open enrollment policy "which is color blind."

"It helps both blacks and whites," she said.

MOTHER ATTACKS ENROLLMENT POLICY

A black parent told the Massachusetts Commission Against Discrimination yesterday that her daughter had been assigned to the Solomon Lewenberg Junior High School this fall despite the fact that the family had deliberately moved out of the Lewenberg district to avoid going to school there.

Mrs. Barbara Harrison of 52 Clarkwood St., Mattapan, testified at a hearing on a case charging discrimination against black students in the administration of Boston's open enrollment program.

Mrs. Harrison said she preferred to have her daughter to attend the Washington Irving School, which is 10 blocks from her home, because pure bedlam is going on in the Lewenberg. Mrs. Edith Fine, attorney for the Boston School Department, said the Washington Irving school was overcrowded, but the Lewenberg had vacancies.

NAACP FILES SUIT TO RESTORE SCHOOL INTEGRATION PLAN

(By Jerome F. Hansen)

The NAACP has asked the Federal Court in Detroit to reinstate the Detroit Board of Education's original school decentralization and attendance plan.

The request was contained in a suit filed yesterday which challenged the constitutionality of a bill passed recently by the Legislature which nullified the school board's plan.

The suit was filed in large measure to vindicate the five board members who devised the plan, according to Nathaniel R. Jones, general counsel of the NAACP.

The members were A. L. Zwerding, Darneau V. Stewart, Andrew Perdue, Peter Grylls and the late Dr. Remus Robinson.

The first four voted for the plan and were recalled from office this month. Dr. Robinson was too ill at the time and did not vote.

The plan, designed to increase racial integration in 12 of the city's 22 high schools, stirred widespread controversy. Many persons objected to the distance students would have to travel to school.

However, the legislature voided the plan by ordering the boundaries drawn by a three-member committee appointed by the governor and deferring changes in attendance areas.

"As a result of the action of the Legislature," Jones said, "not only were the efforts of this school board frustrated, but their successors in office are required to carry out an unconstitutional policy maintaining the existing segregated schools."

NAACP officials, scheduled to meet Tuesday with Federal Judge Stephen J. Roth, who will handle the case, said the suit was filed because "we believe that the constitutional mandate for desegregated education must apply equally throughout the United States."

"In Michigan, we have a situation where a northern legislature has adopted the judicially discredited southern tactic of interposition and nullification (commonly known as states' rights) to prevent black and white children from enjoying their constitutional rights to an integrated education enforced by the U.S. Supreme Court." the NAACP said.

"This lawsuit is part of a continuing pattern of school desegregation suits sponsored by the NAACP in northern communities."

In addition to asking that the school board's decentralization attendance plan be reinstated, the suit also asks:

That the Legislature's plan be declared unconstitutional.

Assignment of principals, supervisors, faculty and other personnel in proportion to the school's racial makeup.

That construction of school buildings be delayed until desegregation is completed.

Named as defendants in the suit were the governor, state attorney general, State Board of Education and the Detroit school board.

The suit contends the Legislature's action violates the 14th Amendment to the U.S. Constitution.

"The (legislative) act pertains solely to the Detroit Board of Education and thereby deliberately prohibits the Detroit Board of Education from making pupil assignments and establishing pupil attendance zones in a manner which all other school districts in the state of Michigan are free to do," the suit contends.

AUGUST 26, 1970.

Mr. JERRIS LEONARD,
Assistant Attorney General,
Department of Justice,
Washington, D.C.

DEAR MR. LEONARD: In relation to our conversation on the 13th and my earlier letter to you regrading the firing or demotion of black teachers in the South, I have the following additional requests for information which I would like to place in the Committee record:

1. As early as possible I would like to have the number of complaints received by you from the Committee or the NEA concerning the Louisiana and Mississippi schools. I wish for them to be identified as NEA originating where possible.

2. I wish the specific information set out in my earlier letter as to your post-investigative evaluation of the complaints.

3. I wish to have your evaluation of whether you have been granted full access to all complaints alluded to in our hearings.

4. There has been a great deal of controversy over the firing or demotion of Black teachers in the South. On the one hand Southern school systems have received bitter complaints concerning the low quality of Black schools and teachers. On the other hand equally vociferous complaints are received when there is an attempt to upgrade teacher quality on a fair and equitable basis. Could you furnish a statement of HEW-Justice policy in the area of hiring and firing of teachers? I wish specifically to know the degree of federal involvement in teacher hiring policy you propose for the federal government.

Your prompt attention to this matter will be greatly appreciated.

Sincerely yours,

JOHN L. MCCLELLAN.

DEPARTMENT OF JUSTICE,
Washington, August 28, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: This is in response to your letter of August 26, 1970 requesting additional information respecting complaints about the firing or demotion of black teachers in the South.

My letter to you of the same date explains some of the problems that exist in trying to give a precise report. In addition, during these weeks when school openings are underway we do not have the staff to do a detailed analysis of the type you request. I should also note that at present the Federal Bureau of Investigation is, at our request, investigating complaints of demotions or dismissals in approximately 18 systems, and we have not yet received their investigative reports as to these systems. In these circumstances I would ask your indulgence and would propose to attempt to provide a full answer to your first two questions later in the fall.

You inquired whether we have been granted full access to all complaints alluded to in the Committee hearings. We have examined the full record of the hearings and have been given access to N.E.A. files in Washington. Because the source of some complaints is unclear and some complaints are non-specific in nature, it is difficult to assess whether the disclosure by the N.E.A. has been complete. I know that some instances of non-cooperation in the field have occurred recently but I know of no such recent problems in Washington.

Finally, you inquire into our policy as to hiring and firing of teachers. Our policy is to enforce the requirements of non-discrimination as spelled out in the court decisions. The most detailed appellate description of those rules appears in *singleton* v. *Jackson Municipal Separate School District,* 419 F. 2d 1211 (5th Cir. 1969), and I think it worthwhile to set those rules out here. The court ordered:

DESEGRATION OF FACULTY AND OTHER STAFF

The School Board shall announce and implement the following policies:

1. Effective not later than February 1, 1970, the principals, teachers, teacher aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969–70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

2. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

3. If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dis-

missed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill that did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General, Civil Rights Division.

[From the Chicago (Ill.) Sun-Times, Aug. 13, 1970]

BEGIN FACULTY INTEGRATION OF SCHOOLS HERE

(By Joel Havemann)

School Supt. James R. Redmond announced Wednesday that about 700 teachers have been given school assignments to increase faculty integration in Chicago schools in September.

He said this number was about 16 per cent of the 4,400 teachers that must be assigned on the basis of race so that the Board of Education can meet federal desegregation guidelines.

Of the 700 teachers assigned so far, Redmond said 400 are new teachers or substitute teachers who have gained regular certification this summer.

The other 300 are substitutes formerly assigned to a school full-time who have been displaced by regularly certified teachers.

NO MANDATORY TRANSFERS

No regularly certified teachers have been forced to transfer in the interests of integration, Redmond said. Mandatory transfers have been attacked bitterly by the Chicago Teachers Union.

The Justice Department threatened last summer to sue the school board if it did not integrate its teaching staffs.

The Health, Education and Welfare Department suggested that the number of black teachers at any school should not deviate by more than 10 per cent from the citywide average of 34 per cent.

HEW proposed a number of desegregation steps, including about 1,000 mandatory transfers. Redmond told the school board he was negotiating with HEW officials to work out a plan acceptable to federal officials and to the board.

In other action, the school board sent telegrams to all U.S. senators and congressmen from Illinois, urging them to vote to override President Nixon's veto of the federal aid to education bill.

ON VETO OF EDUCATION BILL

Redmond said the bill would increase Chicago's share of federal aid by nearly $5 million, to an annual total of $37 million. Mr. Nixon said he vetoed the bill because it was inflationary.

Board members also criticized the efforts of school administrators to combat street gang activities in the schools.

They suggested that school officials work more closely with militant community organizations and perhaps establish a "gang intelligence unit" within the school system.

Board members responded to a report by Deputy School Supt. Manford Byrd Jr., who recommended that the quality of the schools be improved to the point where they would attract their pupils away from the gangs.

Board member Warren H. Bacon suggested that school administrators co-operate with such organizations as Operation Breadbasket, The Woodlawn Organization and the West Side Organization.

Byrd said the schools already worked with such groups as the YMCA and Boys Club.

"What we've done in the past has proved entirely inadequate," Bacon said.

Board member Alvin J. Boutte suggested the possibility of a school "gang intelligence unit" similiar to the one in the police department. Byrd said such an idea might work.

Boutte noted that the board has spent its entire 1970 budget for school security. Byrd promised that a transfer of funds into the security budget would be proposed before September.

Boutte asked whether school officials conferred enough with parents whose children had difficulties with the gangs. When Byrd said they did, several black persons in the audience groaned.

Byrd said school officials would consider the board members' suggestions.

The board meeting was disrupted by 13 Southwest Side residents wearing yellow hard hats who demanded that the board reverse its decision to place a prefabricated classroom building at the O'Toole Elementary School, 6550 S. Seeley.

One woman was escorted out of the meeting by security guards and the other 12 followed her. They demanded that the board relieve overcrowding at O'Toole by redrawing school boundary lines so that most black pupils would be eliminated from O'Toole.

The board appointed three high school principals:

Bernard E. Dawson to Calumet High. Dawson, the black former principal of Du Sable Upper Grade Center, was selected by a community screening board after the community forced out Charles L. LaForce, who was white.

James P. Maloney to Schurz High. Student disruption last January forced Maloney out of the all-black Crane High. Schurz is all white.

Edward C. Bennett to Cooley Vocational High.

Byrd said school officials would consider the board members' suggestions.

SUPPLEMENTAL STATEMENT

Mr. CHAIRMAN, yesterday some supplemental information concerning the subject of today's statement came to my attention.

The two newspaper clippings from Boston and Detroit are self-explanatory. They relate the continuing controversy in Boston over integration, and the refusal of the U.S. District Court in Detroit immediately to set aside the Michigan law requiring desegregation of the Detroit schools.

The letter from Stanley Pottinger, Director, Office for Civil Rights, Department of Health, Education, and Welfare, explains the refusal of HEW to allow transfers from Cotton Plant to McCrory. I note that the HEW policies and Fifth Circuit Decision quoted in the letter, if enforced in Boston, would no doubt have prevented a large part of the segregation that now exists in that city. It is my contention that Boston has in effect created a dual system in that city, using the open enrollment policy to accomplish this fact.

I am hopeful that someday we will in fact see a national policy on integration that is enforced equitably and without preference or discrimination as between the states of the South and the states of the North and other sections of our country. I believe that the statement that I have made today proves that we do not have a single standard national policy on school integration, and that we have never had such a policy.

I ask unanimous consent that this material, the news clippings and the letter from Mr. Pottinger, be placed in the hearing record following my statement.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., September 21, 1970.

Mr. EMON A. MAHONY, Jr.,
Assistant to Hon. John L. McClellan,
U.S. Senate, Washington, D.C.

DEAR MR. MAHONY: Bill van den Toorn has told me of your concern about the question of student transfers from one school district to another.

I understand that the question arose with specific regard to the Cotton Plant school district in Arkansas. There the Board of Education approved the transfer applications of roughly 50 white students who wished to enroll in a school of the neighboring McCrory school district. The transfer, if effectuated, would have left the Cotton Plant High School nearly all-black and as such, would have conflicted with the proposed desegregation plan submitted by the district and accepted by the Office for Civil Rights on June 11, 1970. The plan provided that all students in grades 10–12 (141 black students and 58 white students) would attend the Cotton Plant High School at the start of the 1970–71 school year.

It has been the longstanding policy of the Office for Civil Rights to disapprove transfer arrangements when their effect is to undo legally required desegregation. In this regard, Subpart C, Section 16 of the "Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964" provides:

"School systems are responsible for assuring that no arrangement is made nor permission granted for students residing in one school system to attend school in another school system in any case where the result tends to maintain what is essentially a dual school structure in either system."

The U.S. Court of Appeals for the Fifth Circuit recently ruled with respect to several school desegregation cases that:

"If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system." *Singleton v. Jackson Municipal Separate School District.* 419 F. 2d 1211 (5th Cir. 1970).

In advising school officials that the proposed transfer arrangement in this case violated the requirements of Title VI, our Regional Office at Dallas was acting consistent with established policy and judicial standards.

We appreciate your interest in this matter. If I can be of further assistance, please let me know.

Sincerely yours,

J. STANLEY POTTINGER,
Director, Office for Civil Rights.

[From the Boston (Mass.) Herald Traveler, Sept. 9, 1970]

ANOTHER LOOK AT "IMBALANCE"

Commr. of Education Neil V. Sullivan, an ardent champion of racial balance in the public schools and the use of busing to bring about this end, has taken a gingerly step in the opposite direction.

He has appointed an Advisory Committee on Racial Imbalance, the presumed purpose of which is to review and study the state's racial imbalance law which has proved so disruptive to the Boston school system, and to recommend changes or perhaps even repeal.

Sullivan, a former superintendent of schools in Berkeley, Calif., where he racially

balanced the schools by cross-busing, arrived here a year and one-half ago to take over supervision of secondary and elementary public education at $30,000 a year, and has sat on his hands while the educational problems of the capital city worsened.

He agreed to appoint the special panel to review the racial imbalance law at the insistence of John D. Warner, aggressive new director of the Boston Redevelopment Authority, who sees the city in a crisis situation because of the controversial statute.

But warner does not intend to sit back and permit Sullivan's blue ribbon panel of 14 to study the problem to death while conditions created by the racial imbalance law worsen and a $100 million school building program planned by the city grinds to a halt.

"I intend to keep the pressure on him," declares the tough-minded Warner. "While I am, of course, pleased that the commissioner has appointed this study panel, I want to see it go into action immediately.

"Consequently, I will ask how soon this special committee intends to meet, and will ask to appear before the committee at the earliest opportunity to state my views concerning the damage the racial imbalance law is doing to the city of Boston in its efforts to build new schools.

"This year is, of course, lost, but if we get moving on the problems now, perhaps by the opening of the next school year the situation with respect to racial imbalance can be put back into its proper perspective, and progress in the building of new schools can commence."

But if Sullivan's record in Berkeley, Calif., is any criterion, he may not be easy to push into taking direct action to wipe the racial imbalance law off the statute books, or even change it drastically.

Sullivan blasted no less a personage than President Nixon when the nation's chief executive had the temerity to question the advisability of busing children from one end of a city to the other to achieve racial balance.

And he also took on U.S. Atty. Gen. John Mitchell and the then Secretary of Health, Education and Welfare, Robert Finch, when they disagreed with him on the same subject.

Since then, Sullivan has been relatively silent, apparently because of a rap on the knuckles he received from Gov. Sargent, who made it clear that he did not approve of department heads making major policy statements without clearing them through the governor's office.

But Sullivan is a controversial figure, as evidenced by some of the statements attributed to him while he was in Berkeley, Calif.

For instance, in October of 1968, the Berkeley High School faculty steering committee met with Sullivan to discuss the Berkeley Unified School District's acceding to demands made by the high school's Black Student Union.

One of the questions put to Sullivan, according to a report published in the steering committee's bulletin, was:

"Many teachers are concerned that ready giving in on the part of the administration to the demands of a small group will convince all students that militancy is the only way to get things done. What is your opinion on this?"

"Damn right it is," replied Sullivan, according to the published report. "History has shown that the only way to get things done is to get a shotgun and stick it up against the other people's neck."

Consequently, it is not anticipated that Sullivan will remain silent for long, particularly since he has been challenged by the hard-driving Warner to get off his racial balancing kick, and provide the leadership necessary to straighten out the problems created in the Boston school system by the racial imbalance law.

Warner is no pushover, however, as Sullivan will find out if he is determined to persist in pursuing a philosophy which simply cannot work in a city like Boston.

The BRA director has already expressed his indignation over Sullivan's testimony before a Senate committee headed by U.S. Sen. John McClellan of Arkansas.

Sullivan criticized Boston's open enrollment plan, in which any pupil, anywhere in the city, can go to the school of his choice, provided there is a vacancy. He said he considered the policy "racist."

Warner has termed Sullivan's remarks "unfair and unwarranted, and showed a tragic lack of knowledge of the city's problems."

He points out that the open school enrollment policy was instituted years ago, long before the conception of the racial imbalance law, which is proving so harmful to Boston.

"The key is that this racial imbalance law doesn't work," Warner asserts. "It has a classic ability to harm both blacks and whites. In the long run it will force busing of kids around the city and this is not healthy.

"It requires the building of schools on the peripheries, and that is wrong. There is no substitute for the strong neighborhood school, and the racial imbalance law makes this impossible."

Warner is convinced that the time to do something about the racial imbalance law is now, if the city is to replace with new schools the antiquated structures which should have been replaced long ago.

And it would appear he does not intend to permit Sullivan to serve as the stumbling block.

[From the Detroit Free Press, Aug. 4, 1970]

U.S. COURT BLOCKS INTEGRATION PLAN FOR CITY SCHOOLS

(By William Grant)

U.S. District Judge Stephen J. Roth denied Thursday a request by the National Association for the Advancement of Colored People that the Detroit school system be required to put its controversial high school integration plan into effect next week.

The NAACP had made its appeal as part of a suit challenging the right of the Michigan Legislature to prohibit the school system from implementing the plan which was adopted by the school board last April 7.

A hearing on that suit has been set for the first two weeks in November, but the NAACP had asked that Judge Roth order the plan implemented pending the final outcome of the case.

Judge Roth said Thursday that to issue the temporary order would be, in effect, deciding the whole case.

"The best interests of the schools, the students and the parents will be served if no order is issued at this time," Roth said.

Attorneys for both sides were notified by telephone Thursday morning of Judge Roth's decision. The judge has been hearing cases in Flint and his office said a written opinion will be available early next week.

The decision means Detroit students will enroll next Wednesday as if the school board had never adopted its April 7 high school integration plan.

Charles Wolfe, executive deputy superintendent for the school system, said:

"Students will follow the same school attendance pattern they have for the past several years. Anyone with any question should call either their neighborhood school or the regional school office."

The school board voted 4–2 April 7 to alter school boundaries to balance the racial composition of 11 of the city's 22 public high schools.

But the Legislature passed a new state school decentralization law in July which prohibited the board from implementing the integration plan.

And Detroit voters Aug. 4 recalled from office the four board members who had approved the plan.

RESUMPTION OF FULL-SCALE MILITARY SHIPMENTS TO GREECE

Mr. FULBRIGHT. Mr. President, the Department of State has now announced the resumption of full-scale military shipments to Greece. This decision will be regarded by many here in the United States, in Europe, and in Greece as most unfortunate. That the announcement comes at this particular time is, perhaps, not accidental.

We have been told that the decision "in principle" to resume military shipments to Greece was made some time ago. I might note, however, that this decision was not then communicated to the Senate. Since taking that decision "in principle," the administration has undoubtedly been trying to figure out how to announce it in a way that would attract the least attention while at the same time making it appear more justifiable. In this respect, the present Middle East crisis may even have been viewed as a most convenient and timely development.

Given the present public preoccupation with events in Jordan, the resumption of heavy military aid to Greece may pass almost unnoticed. For those few who do take notice, there is the convenient argument that this is a moment when the United States must shore up the southern flank of NATO. At best the only relevance of the NATO bases in Greece to events in Jordan is the fact that they are the only eastern Mediterranean ports still open to our 6th Fleet. Without access to these bases it would undoubtedly be far more difficult for us to involve ourselves in Jordan.

There is, of course, a precedent for the technique used in announcing this decision. In October 1968, following the Soviet invasion of Czechoslovakia the State Department "relaxed" the embargo long enough to ship a few "selected items" of major equipment to Greece.

Although the Committee on Foreign Relations was duly notified of this action, the magnitude of the deliveries involved was not immediately apparent. We were subsequently surprised to learn that they included a squadron of jet fighters and some minesweepers. Fortunately the alleged or presumed threat to Greece from Czechoslovakia never materialized, but the colonels got their equipment anyway.

The State Department maintains that the junta has made substantial progress toward the restoration of political freedom in Greece. They further argue that the continuation of our embargo is unlikely to move the junta toward further reforms.

The recent release by the junta of some political prisoners is a positive step. No one knows, however, what number remain in prison or in exile on the Greek Islands. Insofar as I know, those still being held do not yet have recourse to

civilian courts to seek their release. Martial law remains in effect and there is no sign of a restoration of parliamentary government.

The colonels appear to have done just enough to pry loose the tens of millions of dollars of equipment which the Defense Department has been so anxious to give them. The eagerness of the Defense Department to release this materiel must have increased recently following reports that the Greek junta was considering the purchase of tanks from France. The Defense Department would certainly not welcome the prospect of losing a good recipient for its giveaways.

It remains to be seen what impact, if any, our resumption of full-scale military aid to Greece will have on our other allies on NATO's flank, the Turks. It may well be that the Turks, seeing their traditional Greek enemy being strengthened, will demand that their own forces be similarly augmented—out of concern over the Russians, of course.

This is a sad, but familiar ring to this entire affair. We espouse high-sounding principles on the one hand while dealing with dictators for military bases on the other. The administration might at least spare us the pain of its rhetoric and get on with its deals—provided, of course, the price is right.

DECLINE OF U.S. CASUALTIES IN VIETNAM

Mr. HANSEN. Mr. President, without question one wartime casualty is too many. But nevertheless it is heartening to see the continuing decline in our casualties in Vietnam as a result of President Nixon's decision to wipe out the North Vietnamese Cambodian sanctuaries as a result of his Vietnamization program and as a result of his withdrawal of American troops.

I am sure we all noticed that again last week, casualties dropped below the 60 mark to 54. They have been running below the hundred mark each week since July 1.

Mr. President, as I said, we cannot be satisfied over any wartime casualties, but let me point out that this war is taking only a small fraction of the lives we lose every day to other forms of violence.

For instance, we lose an average of more than 4,000 Americans each month in automobile fatalities. In July, the last month for which I have figures, 4,880 persons were killed in auto accidents.

During the first 6 months of 1970, approximately 10,000 persons lost their lives by drowning and in other public accidents, 13,500 more were killed in home accidents and 7,000 in accidents at work.

Concerned Americans, acting through many organizations on many fronts, are trying to reduce this tragic toll of lives. For example, highway deaths reflect a smaller mortality per passenger mile.

All of us are gratified with the progress that is being made to end the war in Vietnam. The drop in casualties is solid evidence of that progress.

We all wish the President Godspeed in successfully terminating this conflict.

PROTECTION OF THE GARNER VALLEY IN CALIFORNIA

Mr. CRANSTON. Mr. President, recently the California Legislature adopted Assembly Joint Resolution No. 62, which memoralizes the President and the Congress of the United States to take immediate action to preserve Garner Valley or portions thereof in California.

As the sponsor of the bill (S. 4045) to purchase 6,400 acres of privately held lands within the valley and add them to the San Bernardino National Forest, I am delighted by the action taken by the California Legislature. It is but one more indication of the support within California for immediate efforts to protect this valley from high-density commercial and residential development and to preserve its potential as an open space area and as a natural resource.

Mr. President I ask unanimous consent that the text of Assembly Joint Resolution No. 62 be printed in the RECORD.

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

ASSEMBLY JOINT RESOLUTION No. 62—RELATIVE TO GARNER VALLEY

Whereas, Garner Valley in the San Jacinto Mountains in Riverside County is a scenic area within short traveling distance from major population centers of California; and

Whereas, There exists a crucial need for recreational land near major population centers in California and the nation; and

Whereas, The preservation of present recreational land is of highest priority in California's fight to preserve her environment; and

Whereas, The several thousand acres of Garner Valley are adjacent to the San Bernardino National Forest; and

Whereas, Proposed development of this area may have adverse ecological effects upon such surrounding lands; and

Whereas, A recent United States Forest Service report indicates the advisability of protecting Garner Valley to insure the conservation of federal lands in this area; and

Whereas, This study specifically notes that Garner Valley is a key watershed in the upper reaches of the San Jacinto River, and proper management of both private and national forest lands is essential from a flood control, water quality, and soil erosion standpoint; and

Whereas, The federal government owns surplus property which consists of less desirable recreational land throughout California and in the vicinity of the City of Riverside, and it may be in the best interest of the people of the State of California and the nation to preserve Garner Valley and allow development on other surplus land; now therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take immediate action to preserve Garner Valley or portions thereof; and be it further

Resolved, That such action emphasize the possibility of exchanging surplus land or other federal properties in the vicinity of the County of Riverside or elsewhere for such Garner Valley land; and be it further

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

LEGISLATIVE COUNSEL'S DIGEST

AJR 62, as introduced, Veysey (Rls.) Garner Valley.

Memorializes the President and Congress of the United States to take immediate action to preserve Garner Valley or portions thereof, possibly by trading surplus federal land for land therein.

Fiscal Committee—No.

ABSENCE RECORD OF GENERAL SESSIONS JUDGE MARY C. BARLOW

Mr. WILLIAMS of Delaware. Mr. President, yesterday the Washington Evening Star published an editorial entitled "Judge Barlow's Return."

This editorial very properly calls attention to the responsibility that Judge Barlow has to the citizens of Washington and to the American taxpayers to tender her resignation from the court.

The manner in which she has insisted upon holding title to her position while at the same time neglecting her duties as a judge over the past few years is a reflection on the integrity of the court.

On August 16, 1970, an article appeared in the Washington Post entitled "Judge Barlow Hasn't Worked in a Year and Yet She Refuses To Resign Her Position," commenting upon the disgraceful absenteeism of Judge Barlow in relation to her duties.

In the face of this miserable record, if she refuses to tender her resignation the Judiciary Committee should consider action toward seeking her removal.

I ask unanimous consent that both the editorial and the article be printed in the RECORD.

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

JUDGE BARLOW'S RETURN

Resuming her judicial duties the other day after an absence of more than a year and a half, D.C. General Sessions Judge Mary C. Barlow said she thought she might be able to work "a full day from now on." We think the decision is regrettable. In the public interest, as well as her own, Judge Barlow should retire.

In a brief discussion of her absence with reporters, the judge referred to a number of ailments she has suffered during a prolonged illness. Under such circumstances, no one has any desire to be cruel. Certainly Chief Judge Harold H. Greene was not last February, when he unsuccessfully requested her retirement "in view of the extraordinary demands that are being made on the court and its judges in these times of unprecedented case loads . . ."

The point is that today General Sessions, in the midst of its transition to the status of the city's new Superior Court, faces an even heavier burden, which inevitably will be passed on to its judges in the form of greater personal demands. It was evident her first day back, and hardly surprising, that Judge Barlow was operating under great strain. It is not likely that the strain will let up.

Judge Barlow is fully eligible for retirement on the basis of two-thirds of her $34,000 salary. She would not gain a great deal by awaiting a salary increase to $36,000 next spring. In view of her incredibly bad attendance record since 1965, she surely can harbor

no hopes of reappointment when her present term expires a year from now. Nor, in all candor, can the court, confronted with its new challenges, afford to wait that long.

JUDGE MARY BARLOW HAS NOT WORKED IN A YEAR—AND YET SHE REFUSES TO RESIGN HER POSITION

(By William N. Curry)

Back on Feb. 28, 1950, Secretary of State Dean Acheson was tilting with a Senate Appropriations subcommittee over a favorable comment he made about State employee Alger Hiss. Elsewhere on the Hill, a police inspector was asserting his belief that inadequacies in Washington's police force were "hampering law enforcement." And in still another hearing room, Mary C. Barlow was swearing to the Senate District Committee that if she ever became disabled, she would resign from the Municipal Court judgeship she was then hoping to assume.

Miss Barlow received that judgeship, and she stayed on the bench when the court later became the Court of General Sessions.

Since 1967 she has served exactly 51.5 days at court and she has served none since Jan. 1, 1969, yet Judge Barlow has repeatedly refused to resign.

Meanwhile, Judge Barlow enjoys the $6,500 in annual salary boosts the Congress has voted for the court's judges since 1968, the year Miss Barlow showed up at court seven times. She now makes $34,000 a year.

Beyond the money, Judge Barlow's insistence on tying up one of the court's 23 authorized judgeships means just that much more work for a court that can barely keep pace with its rising workload, let alone reduce its oppressive backlog.

Commenting on the court's backlog of pending cases, Chief Judge Harold H. Greene says, "It depends entirely on the number of judges. The more judges, the smaller the backlog." In a report issued early this year, Judge Greene said the court received 4,357 more criminal jury cases in 1969 than it did in 1968. The number continues to rise. Today the court operates with only one more judge than it had in 1968.

By hard work and long hours, temporary measures and tighter administration, the court has kept even with its increased workload. The backlog remains stable, however, with more than 3,100 criminal cases scheduled for jury trials.

When President Truman named her for the Municipal Court post in 1950, Mary Catherine Barlow, at 32, was the youngest federal judge ever appointed by a President. At the time, Miss Barlow was law librarian for the 10 judges then on the Municipal Court bench. She was also teaching legal bibliography at the old National University Law School. A native of Grafton, W. Va., she had once been a professor of law at the old Columbus University. Although she was admitted to the D.C. Bar in 1943, when Judge Barlow assumed the bench on March 28, 1950, she had never done trial work.

Her dearth of in-court experience brought opposition to her appointment at the Senate District Committee hearing that February day in 1950. But the committee's chairman, Matthew M. Neely, a West Virginia Democrat, quickly put an end to that. After all, it was he who had been Miss Barlow's voice at the White House; he had sponsored her appointment in competition with some 400 other eager candidates for the then-$13,000 a year post.

Another point came up at the hearing. Juvenile Court Judge Fay Bentley had sparked a controversy over when a judge should resign. Judge Bentley was a patient at St. Elizabeth's Hospital and steadfastly refused to call it quits until her appointment expired.

Mindful of this at the hearing, Sen. Lester C. Hunt (D-Wyo.) said he had a routine question he liked to ask all prospective federal judges: Would he or she resign upon becoming incapacitated or disabled?

A *Washington Post* account of the hearing reports: "After pointing out that the Municipal Court term is 10 years, Miss Barlow said she would resign if permanently incapacitated."

The Evening Star said: "Miss Barlow said she would resign if incapacitated."

Another judicial nominee before the committee that day, Thomas C. Scalley, said that he, too, would quit if he could not serve the court. He is still on the bench at 72 and reports to work daily.

The Senate committee unanimously approved her nomination; the full Senate followed several days later, and Miss Barlow was sworn in on March 28, 1950. There followed 10 years of regular work on the bench by Judge Barlow.

With the expiration of her first appointment in 1960, the Eisenhower Administration let it be known that Mary C. Barlow, a Democrat, would be a one-term judge. But the Kennedy victory saved Miss Barlow, and she was officially reappointed in September of 1961, having stayed on the bench during the interim 19-month period.

During her first term and the first few years afterward, Judge Barlow served the court regularly. In 1964, or thereabouts, her attendance fell off drastically. According to available court records, which begin with 1965, Judge Barlow was present at court 137 days in 1965 (at a $23,500 salary). This amounted to about 50 per cent absenteeism.

In 1966, Judge Barlow's days at court dropped off to 105.5, and in 1967 she came to court 44.5 days.

In February of 1967, Judge Barlow's dentist-husband (she still goes by her maiden name) told a reporter: "Judge Barlow is ill and has been ill for some time. I am sure she will be back in court soon."

Nevertheless, the following year, 1968, with her salary then up to $27,500, Judge Barlow came to court only seven days, putting in about 30 hours of effort. Court records do not show the last day she came to court in 1968, but whatever day it was, it was, indeed, "the last." She was not there at all in 1969. Or so far this year.

Judge Barlow's $34,000 salary this year could be even higher if a pending court-reorganization bill raises that salary.

The case of Mary C. Barlow began a new phase on March 28, 1970. For that was the first day that Miss Barlow became eligible for a retirement pension.

For years, Judge Barlow's friends at the court had somewhat defended her refusal to quit. This was because the retirement plan she is under requires at least 20 years' service to earn a pension. If Judge Barlow had retired even one day before the 20 years of service, she would have received no retirement pay. With those interim 19 months of service, her 20th anniversary was March 28, although her second 10-year term will expire in September, 1971.

So, many people expected Judge Barlow to retire on March 28, her 20th anniversary. But she didn't.

Desirous of getting the General Sessions Court up to full strength, Chief Judge Greene early this year coaxed Judge Barlow to retire. In a Feb. 3 letter, Judge Greene expressed his feeling over her absenteeism, both as a judge and as a citizen concerned about crime. He wrote:

DEAR JUDGE BARLOW: I am informed that as of March 28, 1970, you will have served on the Court for a total of 20 years, and pursuant to the Act of April, 1942, you will be eligible for retirement at a substantial pension. The purpose of this letter is to respectfully suggest that you take advantage of this statute to retire at that time rather than to await the end of your second full term, which will expire on Sept. 18, 1971.

As you know, I have never been critical of your prolonged absence from the Court, even though the other judges and I have been subjected to a great deal of criticism and have had to perform a considerable amount of additional work because of that absence. I consistently maintained that position because I felt that, because of your prior service to the court and to the community, you should be permitted to continue to serve without interference until you were eligible for a pension.

That eligibility will now become fixed next month. In view of the extraordinary demands that are being made on the Court and its judges in these times of unprecedented caseloads and public concern with backlogs and delays, it is most important that all judges authorized to the Court be active and able to participate fully in its work. For that reason, it would seem that you would want to consider retirement as of the date of eligibility for a pension.

Please let me know what your decision will be, for I expect to be asked about this matter by the press and the Congress.

With best wishes,

Sincerely yours,

HAROLD H. GREENE.

Seventeen days later, Judge Barlow sat down with a ball-point pen and wrote the following letter on embossed General Sessions stationary ("Mary C. Barlow/Judge" printed at the top):

DEAR JUDGE GREENE: Thank you for your recent letter. I do appreciate your graciousness and many, many kindnesses.

My physicians indicate I will be able to return to work in the near future. After that we shall discuss my retirement.

Chief, I have been informed that I have no desk; no chairs; no table; and no rug or carpeting on the floor (of her chambers). I am sure you will take the necesary steps to amend these oversights.

With warm wishes,

Most sincerely,

MARY.

So Chief Judge Greene fixed up her office to get it ready for Judge Barlow's return. Despite her statement about being "able to return to work in the near future," six months later she still hasn't showed up for work.

Meanwhile, by hanging on, Judge Barlow stands to pocket an even higher pension. At ⅔ of her present $34,000 salary, her pension today would be $22,666. Any salary increase would further up her pension.

The recently enacted, controversial D.C. crime law (which takes full effect in January) could prove to be Judge Barlow's undoing. It provides for a five-member Commission on Judicial Disabilities and Tenure. The Commission will be empowered to give the heaveho to judges for "willful and persistent failure to perform judicial duties" and to retire involuntarily a judge who "suffers from a mental or physical disability which is or is likely to become permanent and which prevents or seriously interferes with the proper performance of his judicial duties."

On behalf of the court, Chief Judge Greene issued this statement when asked about Judge Barlow: "We strongly support the removal commission."

The caller who phones Judge Barlow at her residence in the Kennedy-Warren Apartment is told by a housekeeper that she is in "but Judge Barlow is ill." All calls are referred to her husband, dentist Lawrence Smallwood.

Dr. Smallwood is asked if Judge Barlow intends to retire soon.

"I haven't heard a thing about it. I don't know."

Does she have any plans to return to court soon?

"I don't know."

Could he disclose the nature of her illness?

"No, I don't have anything to say about it at all."

Is there anything Dr. Smallwood would like to say about Judge Barlow's absenteeism?

"Not a thing. I don't even know what you're driving at. Thank you for calling."

MANPOWER TRAINING ACT AND FAMILY ASSISTANCE

Mr. JAVITS. Mr. President, the Senate passed yesterday, by a vote of 68 to 6, the Employment and Training Opportunities Act of 1970, sponsored by Senator NELSON and representing a highly sophisticated effort on the part of all of the members of the Committee on Labor and Public Welfare, to respond to the administration's initial call for a reform and expansion of our manpower training programs. Of particular significance was the Senate's acceptance of a substantial public service employment program initially authorizing as many as 250,000 jobs and related training for unemployed and underemployed persons. While I sought to refine the public service provisions in order to emphasize the development and eventual mobility of individual participants in the program, I am pleased with the overall acceptance of such a program, which Senator NELSON, others on the committee, and I have long advocated.

Although the Senate has passed this essential legislation, the House of Representatives has not completed action on various manpower training and employment proposals now before it. The Senate, on the other hand, has failed to act upon the House-passed Family Assistance Act, proposed by the administration.

Mr. President, the "twain" must meet in this session if we are to keep our basic commitments to put an end to poverty. It would be not only a colossal irony, but a cruel deprivation to the poor, the unemployed, and the underemployed, if these two measures—which are so essential and so philosophically as well as administratively related—remained locked up on opposite sides of the Capitol.

The Senate's passage of the manpower training bill should assure those who fear the potential costs of the Family Assistance Act that employment and training opportunities in substantial numbers will be available to provide alternatives to welfare dependency. Similarly, those who fear the establishment of "work relief" programs as a substitute for welfare programs must recognize that—in addition to guaranteeing a certain level of income—the Family Assistance Act contains substantial work incentives and arrangements for referral to manpower training, as well as day care provisions—that will encourage and make it possible for hundreds of thousands and eventually millions of persons on welfare to seek "regular" employment to break the welfare syndrome.

Mr. President, I am not urging that any reform is better than no reform since I expect the family assistance plan to represent a successful start in our efforts to provide a basic level of living for all Americans. We should pass it in this session and the legislation should represent a firm commitment to its application to all of the Nation's poor—including its working poor—within a reasonable period of time.

NEITHER HEAT NOR LIGHT

Mr. EAGLETON. Mr. President, on occasions there is more heat than light in this Chamber, but soon there may be less of both.

Senators may have noticed that some lights have been turned off and elevators shut down in the Senate Office Buildings today, but according to many experts, it will get worse.

In the face of high demands for electricity, the Potomac Electric Power Co.—Pepco—has reduced its voltage by 5 percent. To residents of Washington and its suburbs this is only a slight inconvenience—this afternoon. But next week, or next summer, in Washington or elsewhere, this inconvenience could turn to tragedy.

This administration seems to accept chronic shortages of power and cutbacks in consumer service as inevitable. It will be, if this administration continues to ignore the problem. In an administration noted for its rhetoric rather than action, even the rhetoric is missing.

After the power blackout in 1965, and a Johnson administration study, legislation was proposed. However, it was cast aside nearly 19 months ago by the Nixon administration.

Instead of action, the American people got another task force. Instead of strong FPC regulation in the public interest, the FPC got a former lawyer for private utilities opposed to strong action.

Mr. President, it takes 10 years to plan and build new power plants and power lines. So it is critical that the administration stop filibustering and footdragging on legislation—now.

It should either support one of the bills presently before this session of Congress, or propose a bill of its own, or admit to the public that it is incapable of protecting the interests of the American people in assuring reliability of electric power service and protection of the environment.

Mr. President, I ask unanimous consent that a part of a statement on this same general subject matter which I issued on August 30, 1970, as chairman of the Democratic Policy Council's Committee on the Human Environment be printed in the RECORD.

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

ELECTRIC RELIABILITY—THE SILENT ADMINISTRATION

Immediately after the massive New York City blackout in 1965, the Democratic administration carefully studied the electric power supply problem and the environmental problem connected with generating and transmitting electricity. As a result of those studies, legislation to deal with these problems was developed by the Federal Power Commission and unanimously transmitted to the Congress. President Johnson made electric reliability legislation a high priority subject in his 1967 Message on Consumer Protection.

When Mr. Nixon took office, these studies and the concrete proposals which grew out of them were cast aside. Now, nearly nineteen months after Mr. Nixon took office, his administration has failed to propose *any* alternative to the legislation proposed by the Johnson administration or to a number of other bills introduced more recently by Democratic senators and representatives including Senators Kennedy, Magnuson, and Muskie, and Representatives Friedel, Long (Maryland), Macdonald, and Moss (California) on which congressional committees have held extensive hearings.

Rather, Mr. Nixon has passed the buck to another of his special White House task forces which has been restudying the problem for more than a year while the power shortage crisis has become more critical with each passing day. Meanwhile, the chairman of the Federal Power Commission, Mr. Nassikas, a former lawyer for private utilities, has stated to congressional committees that he would recommend another presidential veto if Congress should pass the electric reliability legislation which is before it. Like the power companies he is supposed to regulate as chairman of the Federal Power Commission, Mr. Nassikas favors so-called "voluntary" and "co-operative" action between the power companies and state and federal authorities to solve the power crisis—with the federal government and the states having no real power to look out for the best interests of power consumers or to prevent actions by the companies that would damage our air, water, and land.

Many experts outside the administration blame the "voluntary" and "co-operative" approach for the problems we now face, including the industry's failure to make adequate plans to serve today's electricity needs. Those experts feel this approach can't be expected to solve the problems it caused in the first place.

It takes as much as 10 years to plan and build new power plants and power lines. So it is critical that the administration stop filibustering and footdragging on legislation to resolve the conflicts between power plants and power lines, and the environment. The administration should either support one of the bills that has been pending for more than a year before the Congress, or propose a bill of its own, or admit to the public that it is incapable of protecting the interests of the American people in assuring reliability of electric power service and protection of the environment.

There are further urgent steps the administration should take to assure a more rational use of our natural resources:

1. It should take immediate action to review carefully the electricity rates for industries that use large amounts of power—rates that encourage them to waste rather than conserve electricity. It should also scrutinize the promotional practices of electric utilities that encourage consumers to use more power than can be made available to them.

The administration has a responsibility to the American public to see that our natural resources are wisely used and not wasted, and it should take immediate action to live up to that obligation.

2. Utilities are faced with widespread and rapidly worsening shortages of low-pollution oil, natural gas, and coal, which are used to generate electricity. The administration should permit the greater importation of less-expensive, low-pollution oil which is in critically short supply, for power generation purposes.

3. There is increasing evidence that some natural gas producers are holding substantial supplies of their low-pollution natural gas out of the market in anticipation of a rise in gas prices. The administration should use its existing authority under the Outer Continental Shelf Lands Act to direct those gas producers to produce the gas being held out of the market and make it available to power companies at today's prices for power generation purposes.

4. Low-pollution coal is becoming scarcer and more expensive as the result of shortages of railroad coal cars, strikes and unrest in the

coal fields attributed to the administration's half-hearted and reluctant enforcement of the landmark Coal Mine Health and Safety Act passed by Congress last year. The administration should begin immediately to enforce vigorously the Coal Mine Health and Safety Act, as congressional leaders have repeatedly urged, so the miners will go back to work and produce the clean-burning coal needed to meet the present electricity crisis. And the Interstate Commerce Commission should take immediate steps to alleviate the coal-car shortage by requiring that cars be returned to shippers instead of being held for short-term coal storage by coal users.

5. The administration should seriously consider using the broad allocation of price control authority available to it under the Defense Production Act. Mr. Nixon was all too eager to use the authority of that act to bail the Penn Central Railroad out of its financial difficulties; he should be equally willing to use that authority to require that low-pollution fuels be made available to fuel-short power companies at reasonable prices in their time of great need.

THE HEALTH OF OUR PEOPLE

Mr. HANSEN. Mr. President, all of us are concerned about the health of the American people. There are several proposals before this Congress which provide a variety of ways under which the Federal Government can be of assistance in providing health care to the citizens of this country.

The question many of us raise is whether it is the role of the Federal Government to provide care or to create a climate in which the people can provide such care for themselves, with the Federal Government helping those who do not have the means to provide for their own health care.

I believe most Americans favor the latter approach in health care as well as in most other areas. I do not believe that it is practical or reasonable for the Federal Government to undertake the provision of health care to all Americans. If the experience we have had under medicare, and especially under medicaid, is any criteria, near chaos might well result if the Government tried to provide health care to all Americans. Earlier this year we heard an estimate in the Senate Finance Committee that the medicare hospital insurance program will probably have a $216 billion deficit over the next 25 years based on the present contribution schedule.

Now the Federal Government is already involved, and it certainly has an important role to play, in the providing of health care to the poor who do not have the ability to provide it for themselves. The Federal Government is engaged in the operation of over 100 neighborhood health centers. The Federal Government provides help for the migrant workers, and this Congress has extended this program for 3 more years with the hope that it will become even more effective than it has to be. Through medicaid the Federal Government and the States jointly undertake to provide health care to all of the millions of Americans who are on welfare or who are unable to provide for themselves.

Despite all of these Government programs, over 90 percent of Americans under 65 are providing protection for themselves through health insurance. I believe that health insurance offers the vehicle for all Americans to protect themselves against the high cost of major illness or accident.

Accordingly, I am pleased to introduce a bill which makes use of the health insurance vehicle to provide for the poor and which provides incentives for the rest of the population to buy their own protection.

This approach, known, as "medicredit," relies heavily on the principle of putting a little something aside for a rainy day. But it also recognizes that some people cannot do this and directs the Federal Government to take care of the needs of these people. In addition, this legislation contains review mechanism to control cost, quality, and utilization of medical care.

In the Senate Finance Committee, on which I serve, I have been struck by the differences between medicare and medicaid. I find that medicare generally is working better. Why? I think one reason is because medicare is more an insurance plan while medicaid is more a welfare plan.

Medicredit is an insurance plan. It would replace medicaid by giving to the poor a comprehensive health insurance policy, paid for by the Government. It would give them basic protection against illness and accident without coinsurance or deductibles.

For the rest of the population medicredit provides a tax credit—on a sliding scale—in order to promote the coverage of health insurance for the rest of the population.

Mr. President, the subject of the legislation which I introduce today will be an issue which the Congress will be facing in the years to come. It is an important subject which can have a great impact on the fiscal well-being of the Federal Government.

I introduce this legislation at this time in the Senate to call the attention of my distinguished colleagues and the public to the problems we are facing in our efforts to provide quality medical care to the citizens of the United States. As soon as this bill is printed, I urge all Senators to direct their attention to its provisions and to analyze the bill carefully. I hope that all interested organizations and individual citizens during the months ahead will do likewise. When the Congress meets again in January, it is my hope that the analysis conducted in the next several months will result in comments and suggestions which will be useful in developing this type of legislation. Then when the Congress does act on this subject, we will have had the opportunity to receive and consider views and suggestions from all sources.

I ask unanimous consent that a brief explanation of the medicredit bill be printed in the RECORD.

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

MEDICREDIT BILL

Part A of Medicredit would provide for the issuance of health insurance certificates to those individuals or families whose income tax liability is $300 or less. Such a certificate entitles the owner to a qualified medical care insurance policy.

Part B of this proposal would establish a graduated scale of income tax credits to be allowed for the purchase of health insurance. The credits would be based on tax liability. The amount of the credit would be based on the amount of allowable premium, i.e., the cost of a qualified health care insurance policy.

A qualified health care insurance policy under Parts A and B would be issued by carriers registered with the appropriate state insurance body. The policy would also have to provide basic institutional and medical care benefits, including: 60 days of inpatient hospital services, including maternity and extended care facilities; emergency room or outpatient services; and all medical services, including diagnostic and therapeutic services when performed by or under the direction of an M.D. or D.O. in the hospital, home, office, or elsewhere.

Supplemental coverage could also be provided under a qualified program. This coverage could include: prescription drugs; additional days of inpatient hospital services; cost of blood in excess of three pints; other personal health services provided by or under the direction of an M.D. or D.O.; and up to $25,000 for hospital and medical expenses in addition to those provided by the basic policy after the first $300 of these additional expenses.

The coverage would be subject to certain deductibles and coinsurance provisions for Part B participants. An allowable supplement would be a provision to eliminate this deductible and coinsurance requirement.

A Health Insurance Advisory Board would establish regulations for the administration of the program and would set minimum federal standards for qualified insurance companies and plans. And a Federal Health Insurance Redemption Fund would be created to redeem the health insurance certificates issued under this program. Monies for the Fund would be appropriated from the general revenues.

Part C of Medicredit would establish a Peer Review Organization (PRO) program. The Secretary of HEW would contract with state medical societies for the operation of a PRO in each state. Under the program there would be first local and then statewide review by M.D.'s and D.O.'s of reports and allegations of improprieties bearing on reasonableness of charges, need for services rendered, or quality of services rendered by the provider. A finding against the provider could result in his suspension or exclusion from participation in the Federal Government health programs.

NEW OCEAN FREIGHT SERVICE BY SEATRAIN LINES

Mr. FONG. Mr. President, on July 20, a new trade link was established between Guam, Hawaii, and the mainland United States when Seatrain Lines inaugurated ocean freight service over that route. It marked another step in bringing closer these three American areas separated in the vast Pacific.

I am particularly pleased that the American territory of Guam is being assisted through Seatrain Lines' new service to promote its economic development. Under Gov. Carlos G. Camacho's leadership, Guam has experienced notable economic growth and development, and I am sure this growth will be further stimulated by the entry of the new shipping service to Guam.

I ask unanimous consent to have printed in the RECORD the remarks which were made July 20 at the inaugural cere-

monies by Governor Camacho and Frank D. Troxel, vice president of Seatrain Lines.

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

REMARKS BY CARLOS G. CAMACHO, GOVERNOR OF GUAM

Mr. Troxel, Mr. Lewis, Captain Schwartzman, Admiral Pugh, Bishop Flores, distinguished guests, ladies and gentlemen: It is with great pleasure, on behalf of the people of Guam, that I accept this calabash, a gift from Governor Burns and the people of the state of Hawaii. It is, indeed, heartwarming to know that it symbolizes great and mutual respect that exists between our territory and Hawaii, and between our people and their people. And in addition, it commemorates the inaugural voyage of the Seatrain Lines' *Georgia* from the U.S. mainland to Hawaii and to our very shores.

I would like, at this time, to officially and publicly acknowledge and thank Governor Burns and the good people of Hawaii for the wonderful present. And likewise, I'd like to congratulate Seatrain on this happy occasion and extend my best wishes to all the staff and employees of Seatrain. I welcome Captain Schwartzman and *Georgia's* crew to our fair island.

It is my sincere hope that Seatrain's entry into the Guam trade will be satisfying and rewarding. We welcome the services you are rendering to our people and our territory, and we appreciate whatever contribution you can make to our economic growth and welfare.

I am happy to note that Seatrain will provide ocean freight service for both container and non-containerized cargo between the United States mainland and Guam. Likewise, an extra dimension of the service will be that it also links Guam and the state of Hawaii, further boosting trade and commerce between the two.

I am particularly gratified that Seatrain has agreed to come into the Guam route with a tariff designed to keep down the cost of living. As I understand it, it will provide services at rates fully competitive with the ocean freight rates which prevailed in the Guam trade prior to an increase made on break-bulk cargo.

But much more than this, the coming of Seatrain to Guam will create more jobs for our people, generate more capital, stimulate greater business activities and, generally speaking, boost our over-all fledging economy.

We all know how vital the shipping lines are to our livelihood. We are currently importing more than 90 percent of our foodstuff, clothing, building materials, and other commodities essential to our everyday lives. We are very much dependent on outside activities, and the addition of Seatrain into the Guam route is most welcomed.

Again, I offer my congratulations to Seatrain and I bid you all a warm Hafa Adai. It is my real pleasure to be here today and I like to thank Seatrain for their gracious invitation to participate in this ceremony.

Thank you very much.

REMARKS BY FRANK D. TROXEL, SEATRAIN LINES

All of us at Seatrain who have contributed to the implementation of our Guam Service are very excited with the arrival of our 1st vessel. The Seatrain Georgia arrived yesterday at noon and will sail tonite at midnite. Our second vessel the Seatrain Louisiana sailed from the San Francisco Bay Area at 8:00 a.m. this morning so our Guam Service is well underway.

We're confident we have tailored a service that will offer many benefits to the people of Guam. We are very gratified with the success of our initial sailings and extremely appreciate the customer support we have received.

We, too, are grateful for the cooperation and help we've received from Governor Camacho and the Director of his various departments. Without his help, Secretary Moylan's, Jim Brooks', Joe Sarmiento's, and many others we certainly would not be in the Guam trade today.

It was very refreshing to us to see your government and Commercial Port people cut through time consuming procedures to accomplish the things necessary for us to start our service. Having dealt with other governments and other ports, I can only say it was remarkable. You should be proud of your representatives, they did an excellent job.

It is our hope that the Seatrain Service will measure up to the amount of effort put forth to make it a reality.

Our continuing objective will be to offer your transportation requirements the most attractive transportation alternative. You now have a choice.

All of us at Seatrain look forward to growing with Guam.

Thank you.

INVOLVEMENT OF STATES AND LOCAL GOVERNMENTS IN SOLVING URBAN PROBLEMS

Mr. MONDALE. Mr. President, when Hubert Humphrey was the Vice President, his office spearheaded a number of efforts to involve States and local governments in solving urban problems and to make the Federal Establishment more responsive to the needs and capabilities of these units of government. In a word, to give meaning to what was known then as "creative federalism."

Although President Nixon has announced his support for a "new federalism," two publications that have recently come to my attention indicate how little progress has been made over the past 19 months.

The first of these is a report by David Broder from the National Governors' Conference entitled "The New Federalism: Nixon's Sickly Infant." Mr. Broder points out that none of the "four legislative pillars" of Mr. Nixon's program—welfare reform, revenue sharing, manpower training, and grant consolidation—has been enacted. It is noteworthy that Members of Congress from the President's own party have been prominent in opposing some of these proposals. State and local officers from both parties have also raised numerous and well-founded objections.

Mr. Broder also points out that day-to-day communication between local officials and Federal bureaucrats has deteriorated; and that Vice President AGNEW has downgraded his role as liaison to local and State governments. At the close of his article Mr. Broder quotes from an intensive analysis of the New Federalism prepared by William G. Colman, former executive director of the Advisory Commission on Intergovernmental Relations.

After noting the general forces which may favor a vigorous federalism, such as the difficulty of managing categorical aid programs, Mr. Colman cites a long list of obstacles:

First, the increasing economic and social interdependence in our society;

Second, the strength of program specialization at all levels of government;

Third, the antagonism of categorical aid beneficiaries to revenue sharing;

Fourth, the willingness of national legislators and administrators to advise State and local officials;

Fifth, the inferior revenue raising ability at the State and local level;

Sixth, the problem of coordinating efforts between mayors and Governors;

Seventh, the concern and disillusionment among civic leaders in the North and West over the impact of the "Southern strategy" on vital urban problems; and finally,

Eighth, the fact that the policy and legal actions to effect decentralization must be taken in Washington.

These forces present a threat not only to the abstract concept of cooperation in a federal system but also to the solution of the difficult social and technical problems which plague our society.

I ask unanimous consent that Mr. Broder's article and Mr. Colman's address be printed in the RECORD so that in the coming months, as various proposals come before the Senate, we will have a perspective from which to judge their impact on the delicate balance of intergovernmental politics and power.

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

[From the Washington Post, Aug. 9, 1970]

THE NEW FEDERALISM: NIXON'S SICKLY INFANT

(By David S. Broder)

LAKE OF THE OZARKS, MO., Aug. 8.—A year ago today, President Nixon unveiled to a national television audience his answer to America's "crisis of confidence in the capacity of government to do its job."

He called it the New Federalism and he promised it would reverse the basic trend in American politics from the New Deal through the Great Society.

"A third of a century of centralizing power and responsibility in Washington has produced a bureaucratic monstrosity, cumbersome, unresponsive and ineffective," he said. "It is time for a New Federalism in which power, funds and responsibility will flow from Washington to the states and to the people."

Today, on the first birthday of the New Federalism, as state executives gather here for the annual Governors' Conference, the flow of power from Washington which Mr. Nixon called forth is a barely discernible trickle.

The "bureaucratic monstrosity" has grown by another few thousand employees and another several billion dollars, and the scorecard on the major initiatives Mr. Nixon outlined in his speech shows as many setbacks as gains. The highlights:

The four legislative pillars of the New Federalism—welfare reform, revenue-sharing manpower training and grant consolidation—are snarled in the passageways of Capitol Hill.

It is not certain that any of the four will become law this year, and revenue-sharing—which Mr. Nixon has called "the financial heart of the New Federalism"—is almost certainly dead.

A good deal of progress has been made in the important but unglamorous area of simplifying and standardizing federal programs. But the latest edition of the Catalog of Federal Domestic Assistance, a massive loose-leaf guide to the $28 billion federal cookie jar, lists 1,019 separate programs, including 55 varieties of help for "higher education, general" and 40 categories of emergency preparedness.

"LITTLE PROGRESS"

Rep. William V. Roth Jr. (R-Del.), the congressman who spurred compilation of the catalog, said a study of the document makes it "apparent that in most areas there has been little progress in the consolidation of programs . . . (and) in some areas, the number of programs has proliferated alarmingly."

Despite the high-publicity Nixon trips to "take the presidency to the people," state and local officials complain that day-to-day liaison between Washington, the state capitols and city halls is worse in this administration than the last. Vice President Agnew's Office of Intergovernmental Relations is regarded as undermanned and relatively impotent, and Agnew himself comes in for criticism for allegedly neglecting his assignment as chief White House liaison man on New Federalism projects.

With financially hardpressed state and local executives chronically dissatisfied with the volume of federal aid, criticism is bound to echo. The convention in June of the U.S. Conference of Mayors produced widespread complaints of "neglected" by the Nixon administration.

MOST ARE REPUBLICANS

This week's gathering of governors is likely to be more muted in its criticism—if only because two-thirds of the state executives are Republicans, while most of the big-city mayors are Democrats.

But interviews with federal, state and local officials in the past two weeks produced a bipartisan expression of concern that the "crisis" Mr. Nixon spoke of a year ago has produced no comparable response from either the President or Congress.

Last September, when the New Federalism concept looked fresh and promising, the President, the Vice President, half the Cabinet and three dozen top administration officials went to the governors' meeting in Colorado Springs to drum up support for the proposals.

This year, the top brass from Washington is conspicuous by its absence—just as it was at the mayors' meeting in June.

Agnew's failure to appear at either of these meetings is viewed by a number of governors and mayors as another bit of evidence that he is subordinating the liaison job to other activities.

Three weeks after taking office, Mr. Nixon formally designated Agnew as "my liaison with the executive and legislative officials of state and local government." The President created a new Office of Intergovernmental Relations (OIR) "to operate under the immediate supervision of the Vice President" in strengthening ties between Washington and the state and local officeholders.

Agnew was not available to discuss his role as the President's liaison man, but a staff aide, C. D. Ward, said the Vice President gives "high priority" to the job. Ward cited Agnew's work with the Advisory Commission on Intergovernmental Relations—particularly his role as a catalyst in the ACIR conference on crime control legislation, held at the Western White House. ACIR members confirmed that Agnew was "active and extremely helpful" in that session.

But sources inside and outside government agreed the Vice President has turned over most of the day-to-day liaison work to the OIR. And there is serious criticism of OIR's functions, even from state and local officials who profess strong personal liking for this director, former Gov. Nils Boe of South Dakota.

THREE-MAN STAFF

The entire staff of OIR consists of Boe; Wendell Hulcher, the former mayor of Ann Arbor, Mich.; and Robert Janes, former chairman of the Hennepin County, Minn., board of commissioners.

The presidential directive creating OIR specified that each domestic cabinet department designate a liaison man to the office, but Boe said in an interview that the original plan to give him control of that liaison staff was dropped "because we could not get room for them all" in the Executive Office Building.

As a result, requests for information or assistance from local officials are now routed from Boe's office to the departmental liaison man and back through OIR, in a cumbersome time-consuming procedure.

The second criticism of OIR is that it is divorced from the policy-making machinery of the government and fails to get local officials' views before men whose decisions really count.

Boe himself notes that a group of governors and mayors was brought in to discuss the Nixon welfare bill before it went to Congress last year. But he concedes, "We're not successful in doing that all the time."

From others with long experience in this area come complaints that the reorganized White House domestic staff setup has no one who speaks the views of state and local governments, that White House legislative liaison men treat governors and mayors like a private interest group, a bunch of outsiders." "The problem," said one man, "is simply this: We don't know who to talk to and we don't know who will really carry our concerns to the place where it counts."

The complaints about faults in the liaison process are matched by the praise from state and local officials for the efforts—directed largely by Budget Bureau career men—to carry out the presidential mandate for simplifying the administration of Federal programs.

PRIORITY PROGRAM

Although many of these efforts predate the Nixon administration, Richard P. Nathan, assistant director of the Office of Management and Budget, commented that progress has been more rapid in the past year "because the business of managing government has presidential priority."

James L. Sundquist of the Brookings Institution, a student of federalism and a former official in the Kennedy and Johnson administrations, agrees, calling Mr. Nixon "the first President since Franklin Roosevelt who has devoted serious thought" to governmental organization.

Some of the administrative changes that draw praise include:

The establishment of standard regional boundaries for five key agencies—Health, Education and Welfare, Housing and Urban Development, Labor, Office of Economic Opportunity and Small Business Administration.

Where each of the agencies previously sliced the country into varying regions, all five now have 10 common regions, with a common headquarters city in each. By September, a mayor or governor will be able to contact the field representatives of all five agencies on a single trip to a single city.

A series of Budget Bureau directives have given local officials opportunity to comment in advance on proposed federal program regulations and to comment on grant applications to the federal government from other governmental units in their area.

This "early warning system" is designed to head off problems between states and cities and between separate agencies of both. Another phase of the same effort encourages states to standardize planning districts within their borders, just as the federal government has made its own field operations uniform.

A variety of measures has been undertaken to cut red tape, reduce processing time and decentralize decision-making in federal grant-in-aid programs. This is a three-year effort, only halfway toward completion, but already HUD, HEW and the Office of Management and Budget can point to some rather dramatic reductions in manpower, time and paperwork in particular programs.

Efforts are being made to standardize the audit and accounting methods for federal aid programs, with the hope of reducing the cost to local governments of processing this kind of data for Washington. Success in this area could facilitate actual consolidation of programs, little of which has actually taken place so far.

BUILT-IN LIMITS

There are built-in limits, however, on how far the process of simplification can be carried by administrative action.

The most serious roadblocks to the New Federalism are found on Capitol Hill, where Democratic committee majorities have delayed or rejected virtually all the major bills the President has proposed in this area.

The costliest part of the New Federalism package, the welfare reform bill, has passed the House and—after considerable buffeting—appears likely to be reported in altered form by the Senate Finance Committee.

It has the best chance of becoming law this year of any of the proposals in the New Federalism. But the ironic fact—acknowledged by administration officials—is that the welfare reform bill is centralizing in its impact on the federal system, imposing a national standard for payments that now vary widely from state to state and increasingly shifting the burden of welfare bills to the national treasury.

Theoreticians of the New Federalism argue that income maintenance for needy families is properly a job for the national government. They defend the Family Assistance Plan as part of a necessary reshuffling of roles between Washington and the localities.

But the parts of the reshuffle that are supposed to shift power and money out of Washington are not taking place. Revenue-sharing—a landmark proposal that would have given states and cities an eventual $5 billion a year, free of strings, for their own use—is up against an apparently impenetrable roadblock on Capitol Hill.

The administration succeeded in getting agreement last year, for the first time, among state, county and city officials on a formula for dividing the funds that would be turned back from the Treasury. But the bill is stuck in the House Ways and Means Committee, with no prospect for hearings and only seven of the 25 members favorable to the idea. As a practical matter, it is dead for this year.

Another major component of the President's New Federalism package—an overhaul of the manpower training programs—was dealt a heavy setback by the Senate Labor and Public Welfare Committee last week.

The administration proposed legislation to consolidate 11 separate manpower programs and transfer their administration—with broad latitude—to the states and major cities. The Senate committee altered the plan to let the big cities continue to deal directly with Washington on manpower problems and tacked on a new program of federal grants for public service jobs, which the Labor Department said defeated the whole purpose of shifting control to the states.

Committee action is still some time distant in the House and at the moment there is doubt whether any legislation—let alone the kind of legislation Mr. Nixon sought—will be approved this year.

The last major piece of legislation sought by Mr. Nixon was authority for the President to consolidate separate legislative grant-in-aid programs, subject only to veto by Congress within 60 days.

Sen. Edmund S. Muskie (D-Maine) has included the grant-consolidation power in a broader Intergovernmental Cooperation

Act approved by his Government Operations subcommittee. But the legislation has been stymied in the full committee since last January. Similar bills in the House are still at the subcommittee stage.

Overall, progress on the legislative front has been much slower than administration advocates of the New Federalism had hoped, but many of the architects of the program profess to be optimistic about the future.

They claim progress in involving states in the operations of the anti-poverty program, strengthening the Model Cities program as an aid to mayors, and increasing interest among state and local executives in regional programs for other areas, like the existing Appalachia program.

A speech which former Secretary of Labor George P. Shultz made last March, in which he described the New Federalism as "more than a catch phrase" and called it "a new approach" to government that would prove to be the key to the whole Nixon program, has drawn fresh attention since he moved up as head of the Office of Management and Budget. A White House aide said, "I don't think it's accidental that the one man in the Cabinet who best grasped the New Federalism idea is the man the President has put in charge of his domestic program."

Elliot L. Richardson, former lieutenant governor and attorney general of Massachusetts, pledged to push grant consolidation and streamlining as his top goal in the first speech he delivered last month after becoming Secretary of Health, Education, and Welfare.

A top New York State official, with long experience in federal-state relations said, "From my own perspective, on the long term, I think real progress is coming. This is no longer an issue that concerns just a few people."

While Mr. Nixon has put his own brand on the program, it is no longer a partisan matter. Muskie, the leading Democratic presidential hopeful, has espoused many of the same programs for the past six years.

Although revenue-sharing is dead for this Congress, Assistant Secretary of the Treasury Murray L. Weidenbaum, chief architect of the administration proposal, says, "I am convinced it is just a matter of time" until it is adopted.

Noting that the legislation has been cosponsored by one-third of the members of the Senate and one-fifth of the members of the House, Weidenbaum insists that the outlook is "basically hopeful."

Nathan, the Office of Management and Budget specialist in this area, predicts passage of revenue-sharing next year. "Public pressure will bring it about," he says. "The process is working. By the end of two more years, relations between Washington and the states and cities will have changed so fundamentally that the decentralizing process will continue on it own."

Others flatly disagree.

Milwaukee's Democratic Mayor Henry W. Maier, current head of the U.S. Conference of Mayors, calls New Federalism "a gimmick to back away from the reordering of priorities we need. They're using the states as a buffer—an excuse to avoid doing anything significant to meet the urban crisis."

Others, who do not suspect the administration of cynicism, still profess to see a large gap between the rhetoric and the action on the New Federalism front.

"They talk federalism," said one Washington lobbyist for the cities, "but their own decision-making system is as centralized as any I've ever seen here."

Officials at the Advisory Commission on Intergovernmental Relations, the agency with the greatest institutional stake in strengthening federalism, are rather optimistic about the future.

David B. Walker and John Shannon, its assistant directors, see signs of improving fiscal health and administrative competence among the states, and the likelihood of a substantial improved power and fiscal balance, with revenue-sharing, federal assumption of welfare costs and state relief of local property taxation for education—all within the next five years.

"A lot of what this commission has stood for over the years is what we see happening now," says executive director William R. MacDougall.

But his predecessor in that post, William G. Colman, offers a sober caution to the optimists.

"The New Federalism has a difficult road ahead," he warned in a recent speech. "Despite some supportive influences and a favorable political climate, the built-in factors of opposition, inertia and apathy make its enactment questionable and its ultimate implementation throughout the federal system even more doubtful.

"If meaningful governmental decentralization cannot be achieved at this stage of the swing of the political pendulum, then the long range prognosis is poor. The New Federalism is in danger of bogging down . . ."

THE NEW FEDERALISM: RHETORIC OR REALITY?

(Address of Wm. G. Colman)

At the end of 1968, the Advisory Commission on Intergovernmental Relations concluded its *Tenth Annual Report* with this observation:

"So, at the beginning of 1969, the Nation continues its search for a New Federalism—dedicated to balance; designed to correct structural, functional, and fiscal weaknesses; and rooted in a vital partnership of strong localities, strong States, and a strong National Government. Federalism, after all, seeks to enhance national unity while sustaining social and political diversity. The partnership approach is the only viable formula for applying this constitutional doctrine to late Twentieth Century America. Yet, this approach can succeed only if all of the partners are powerful, resourceful, and responsive to the needs of the people. The alternative is a further pulverizing of State and local power, and the consequent strengthening of the forces of centralization."

Thus did the Commission set the stage and, indeed, herald the phrase for what was to become in the course of the year one of the few major domestic initiatives of the incoming administration of Richard M. Nixon, the thirty-seventh President of the United States.

Six months later on August 9, 1969, the President in a speech to the Nation, said that "after a third of a century of power flowing from the people and the States to Washington, it is time for a New Federalism in which power, funds and responsibility will flow from Washington to the States and to the people." This was followed in a few days by the unveiling of the Family Assistance Plan, representing the first attempted major overhaul of the nation's welfare system since its inauguration by Franklin Roosevelt in 1935.

As we all know, the Nixon welfare plan is still before the Congress with reasonably good prospects for passage. If enacted, the Family Assistance Plan will be a tremendous new step in Federal domestic policy with major implications for intergovernmental relations as well. Regardless of qualifications and caveats to the contrary, it marks as surely as the sunrise a complete Federal takeover of welfare financing—a step urged by nearly all of the Governors and Mayors and by many others concerned with restoring fiscal balance in the American federal system. We can all agree that the new welfare plan is starkly real for its implications for the nation's poor and for the federal system. Of course, under the Family Assistance Plan, money and power become more Washington-based than less, so one must conclude that it is an exception to the President's description of the New Federalism.

But what of the New Federalism—is it to represent reality in the various areas of domestic government, or is it to be only rhetoric?

Rhetoric, in the face of an economic and budgetary squeeze that leaves little if any room for revenue sharing?

Rhetoric, in the face of a growing war in Indochina that threatens to pre-empt the attention and concern of the President, the Congress and the American people for how long no man can say?

Rhetoric, in the face of powerful political and economic forces that greatly prefer to concentrate their efforts in the single arena of Washington to dispersing them among fifty State capitals and innumerable city halls?

Reality or Rhetoric—indeed that is the question—for the New Federalism and for the new directions that the President would like to see the Nation take. He would like to see a strengthening of State and local government and a shifting in the locus of many decisions from Washington to the countryside. These aims find agreement with many politicians and scholars, but both the President and they know full well that the barriers to progress in this direction are incredibly difficult. So let us assess these difficulties in some detail and endeavor to judge whether and how they may be surmounted. Hopefully we will then be in a better position to answer the key question—Rhetoric or Reality?

In order to conduct this assessment we need to look not only at the barriers to decentralization but also the forces that are favorable. Let us begin by identifying those influences and conditions that may augur well for the Nixon-Agnew program. These may be categorized as (1) a "Management Imperative"; (2) agressive Republican governors; (3) emotional attachment to the concept of limited government; (4) desire of most governors and mayors of both parties to have fewer Federal strings tied to Federal aid; and (5) a constitutional system that usually assures the basic initiative in domestic affairs to State and local governments.

1. THE MANAGEMENT IMPERATIVE

Experience in 1967–68 and since that time has shown the management mess that results from trying to run the country from Washington with all important decisions made at the center. At this juncture it would be well to review briefly the history of Federal grant-in-aid programs from a management point of view. In 1960, Federal grants-in-aid to State and local governments totaled about $6 billion (of which $5 billion was for highway and welfare) and involved fewer than 45 separate grant-in-aid programs. These programs had evolved slowly from the 1880's on. Prior to 1930, ten such programs had been established covering land grant colleges, State experiment stations, and extension services; highway construction; forestry cooperation; and vocational education and rehabilitation.

During the New Deal period 14 additional programs were initiated covering public assistance, employment security, public and child health services, fish and wildlife, public housing, and school lunches.

During the post World War II period running through 1959, 20 new programs were established. Of these, five were extensions of already existing programs. Major new fields entered by the Federal Government during this period were: airports and hospital construction, mental health facilities, urban renewal, aid to "federally impacted" school districts, sewage treatment plants and library services.

So at the beginning of 1960, Federal financial aid for specific public services was a significant but by no means dominant aspect of

government in the United States. Except for highways and welfare, Federal aid did not constitute a sizeable proportion of State and local spending in any major functional area. The 44 programs were visible, comprehensible, and manageable. Most governors, mayors or city managers could, if asked, enumerate all or most of the types of Federal aid for which their jurisdictions were eligible.

In 1960, however, public and Congressional opinion was beginning to shift toward a more active involvement of the National Government in many new areas of activity. Public pressure for the "Forand Bill"—the precursor of medicare and medicaid—was mounting. A White House Conference on Education conducted by the Eisenhower Administration a few years earlier had shown strong underlying sentiment for Federal aid for elementary and secondary education. Indeed, medical care for the aged and aid for teachers' salaries was to become a recurring theme in the campaign oratory of John F. Kennedy in the 1960 presidential election.

During the short Kennedy years, many grant-in-aid proposals that had lain on the Congressional shelf for the better part of two decades were dusted off and started through the legislative process. A 1961 statute launched the Federal Government into the new areas of mass transportation assistance and grants for open space. A large program of Federal assistance for mental health was authorized; other new grants involved educational television, air pollution control, health services to migratory workers, and manpower development and training.

The second session of the 88th Congress, at the advent of the Johnson presidency, saw the beginnings of a vast expansion in categorical grant programs: Food stamps, farm labor housing, water resources research, coordinated regional health facilities, outdoor recreation, and the enactment of the Economic Opportunity Act with the launching of the widely heralded "war on poverty."

In the first session of the 89th Congress the enactment of new grant programs reached a high water mark: approximately 25 were legislated during the session. Sizable new programs included medicaid, aid for Appalachia, elementary and secondary educational aid, water and sewer lines, law enforcement assistance, State technical services, solid waste disposal, and highway beautification. Many of the programs enacted earlier were also expanded and broadened.

The second session of the 89th Congress continued to enact new programs, but by 1966 the symptoms of "program indigestion" had become visible everywhere.

The total number of separate statutory authorizations for grants-in-aid had reached the neighborhood of 400.

Various organizations began to publish "catalogs" of available Federal programs for the use of State, local, and private organizations. In fact, the number of grant catalogs was proliferating to the point that a "Catalog of Catalogs" published by the Advisory Commission on Intergovernmental Relations covered nine single-spaced pages!

All of this added up to a "management mess." Too many cooks were spoiling the broth, with duplication, overlapping, and proliferation the order of the day. The patience of governors and mayors began to give way, and the paper tide of grant applications engulfed the Washington bureaucracy.

In assessing this history and the current situation two factors stand out. First, there are over forty thousand units of local government in the United States, not counting school districts. It is utterly impossible, from a management point of view, for any Federal agency to try to deal intelligently with direct applications from this host of possible beneficiaries. When direct Federal-local relations were confined to major capital undertakings such as urban renewal, public housing, airports and the like, the Federal agencies were able to cope. But when this list is expanded to countless small projects from small units, and for such purposes as sewer lines, parks, and water supply facilities, the need for one or more middle stage of review—at the metropolitan or State level, or both—becomes very clear. This means some devolution of authority for priority setting within which Federal grants would then be made. Yet such a change, though fairly inevitable, is strongly resisted as we shall see later.

Another aspect of the management imperative for decentralization is the desirability of avoiding rigid national uniform standards in many fields of intergovernmental concern. Such standards are essential in some programs, such as veterans compensation but undesirable in others such as education of the disadvantaged, city rebuilding and rural economic development. Even here, however, one finds some State and local officials favoring national standards because of their conviction that standards set in Washington are sure to be more liberal than those that would emanate from their own legislature, county commission or city council.

2. OPPORTUNITY FOR REPUBLICAN GOVERNORS

The New Federalism is attractive to those Republican Governors dedicated to the concept of exercising States' responsibilities in order to protect States' rights because it blunt criticism from the conservative wing of their party toward positive but expensive costly State steps to deal with the urban crisis and other domestic problems. A major fiscal fact of life confronting all Governors through the Sixties and certain to continue through the Seventies if not longer, is the recurring necessity to raise tax rates in order to meet State services demands as well as helping local governments meet theirs. This is because the structure of the State-local tax system dictates that collections barely keep pace with economic growth while expenditure demands in this sector are rising at about double the growth rate of the GNP.

Thus, Governors, are faced with a continuing, tough political problem. Nearly all urban industrial States have Republican Governors. The conservative wing of their party as well as many other voters in both parties are resistant to a larger role for State government if it means higher State taxes. The New Federalism arguments of the Nixon Administration help persuade conservative Republican legislators to go along. (Most Democrats oppose these tax plans for political, though not for idealogical, reasons.) A current example is Illinois, where Governor Ogilvie succeeded in pushing through an income tax and similar in Washington where Governor Evans has had to push for higher taxes and higher spending.

3. THE ILLUSION OF LIMITED GOVERNMENT

Despite the Goldwater debacle of 1964 and the clear fact that an increasingly technological and complex society is bound to require an increase in governmental activity at all levels, some people harbor the illusion that someway, somehow, the New Federalism will reduce the total role of government in our lives. They fail to recognize that the President is calling for a shift rather than a reduction, and that if government activity is decreased in Washington it must be commensurately increased by State and local governments. If there were any doubts on this score, the Nixon-Finch-Moynihan welfare plan should have dispelled them, because States and localities were finding the welfare load too heavy to bear, hence the proposed shift of much of the financing and standard setting to Washington. As we have noted earlier, this is the reverse of the general direction contemplated by the New Federalism, but a step felt by many to strengthen the federal system in the long run.

Nevertheless, there is and will continue to be a partially valid case for the proposition that if functions are carried out at the State level they will be financed on a less grandiose scale than from Washington. If one means by this that not every program need necessarily be completely nation-wide in application (e.g. people in Wyoming just might be able to get along without a Federal open space program) then certainly some savings would accrue. But if one hopes that by leaving responsibility to the States, governmental activity in some domestic areas can be avoided, then he is engaging in costly self delusion. Failure of States and localities to act places the ball back in the court of the Congress—where it has been for most of the third of a century to which Mr. Nixon refers—due in no small measure to the abdication of responsibility by State and local leadership.

Nonetheless, invalid though the concept may be, the limited government syndrome must be rated a favorable factor for the New Federalism—at least over the near term.

4. DEMAND OF MAYORS AND GOVERNORS FOR FEWER AID STRINGS

Beginning in 1968 and continuing to date there has been a rising crescendo of complaint from State and local officials about overlapping, duplicating and contradictory Federal regulations governing grant-in-aid programs; the New Federalism seeks to lessen the number of programs through consolidation and to simplify the regulations. Practically all of these officials, regardless of party, support the principle of Federal revenue sharing. They all support grant consolidation, grant simplification and joint funding, and uniform fiscal reporting requirements so that recipient governments are no longer required to maintain a multiplicity of accounting records to document grant-in-aid expenditures. The united support of the mayors and governors for these aspects of the New Federalism is a significant, but not as yet decisive source of political strength of governmental decentralization.

5. THE CONSTITUTIONAL INITIATIVE

Although Article X of the United States Constitution has lost much of its legal significance, there usually must be a reasonable showing of State and local inability or unwillingness to act before a new Federal program can be passed through the Congress. There is a considerable built-in resistance to new Federal programs, and if proponents cannot demonstrate that State and local governments have had a reasonable opportunity to act and have not done so, the opponents of Federal action usually as a minimum, can secure delay till another Congress. This is a play that for both political and parochial reasons is usually supported by most governors and some mayors. It would appear likely that all new Federal programs will have to meet this test—at least, during the lifetime of the Nixon-Agnew Administration.

It should be pointed out that the great flurry of legislative enactments following the Johnson landslide of 1964 dealt for the most part with proposed programs that had been kicking around the Congress for quite a long while—proposals that had long before met the test of State unwillingness or inability to act.

It should also be emphasized, however, that while slowness in the enactment of new Federal programs may be assured by the constitutional structure of the federal system, this in no way assures that existing programs will be decentralized. So in effect we are dealing here with a factor that must be adjudged favorable only because it helps keep an already difficult task for the New Federalism from becoming more so.

So in brief we may say that there are several important but not conclusive influences working in behalf of the goals of the New Federalism. These include management necessities for decentralization, the assist given to and by several vigorous Republican governors, the desires of conservatives for limited government at all levels, the rising clamor of mayors and governors for fewer aid strings and the constitutional nature of federalism which politically tends to place domestic initiatives in the first instance with State and local governments. To these influences one must add the growing political charisma of Vice President Agnew. (At the moment, this is an intangible but very important part of the bookmaker's odds on the New Federalism.)

Now let us examine the obstacles that confront the Nixon-Agnew program. They include:

The growing complexity of society and a trend that generally has continued since the world began of a gradually increasing role of government in the lives of men; and parallel with the flow of people from the hinterland to the city, a flow of power from the periphery to the center;

A "vertical functional autocracy" extending from Washington to the farms, small towns and cities comprising specialists and subspecialists in every field and at each level of government and dedicated to further program growth and further program specialization;

A "Categorical Majority" made up of beneficiaries of Federal and Federally aided programs that emerges only when the combined interests of all or most of them are threatened such as by the initiation of revenue sharing and a consolidation of Federal grants as contemplated by the New Federalism;

The ego of personal decision making that renders unlikely the voluntary surrender of responsibility by Congressional committees or subcommittees and their counterpart program administrators in the Executive Branch;

Fiscal imbalance in the federal system that inhibits program initiative by State and local officials and makes politically tempting to them the palming off of responsibility to Washington on the ground of lack of revenue sources;

The increasing political and policy polarity between mayors and governors that threatens the kind of united front before the Congress that is vital if revenue sharing and other aspects of the New Federalism are to survive;

Growing suspicion and disenchantment on the part of urban political and civic leaders in the North and West who fear a political sacrifice on the altar of the Southern Strategy; and

Most important of all, the fact that the policy and legal actions to effect decentralization must be taken at the center.

1. GROWING COMPLEXITY OF SOCIETY

As the technological explosion continues, the number of domestic fields in which the National government must act, and often pre-empt, grows inexorably. This point is so apparent that it should be axiomatic, but the stubborn view prevails in some quarters that it should be possible in some way to reduce the overall role of government so that it will take in the future a smaller portion of the GNP than it does now. Instances of new Federal functions necessitated by technological advance are legion. In some of these the Federal government has had to pre-empt the field; in others, comparable or complementary action by State and local governments has been required. Regulation of the airways with tens of thousands of employees; regulation of television channels; the establishment of COMSAT for satellite communications; air pollution prevention, abatement, and control; and massive programs for combating water pollution are but a few examples. Certainly, eternal vigilance is required to assure that government does not expand faster than necessary, but expand it will; because expand it must!

This means that unless centralization of our governmental system is to proceed apace, significant decentralization action must be effected each year, *just to keep even*, in the light of new Federal functions sure to arise from technological advances.

2. THE VERTICAL FUNCTIONAL AUTOCRACY

Cabinet officers, governors, county commissioners and mayors continue to lose coordinative program control as the number of Federal grant-in-aid programs multiplies into more and more categories and sub-categories; this condition is highly unfavorable to effective decentralization of governmental functions within the American federal system. When Congress, in the 1930's enacted a number of grant-in-aid programs to assist hard-pressed State and local governments in meeting their responsibilities in such costly fields as welfare and housing, there began, concurrently with these programs, the onset of "functional government" in the United States. This new institutional arrangement was characterized by a chain of direct Federal-State-local functional and professional communication—bypassing in many instances the decision making prerogatives of Cabinet officers, the Executive Offices of the President, Governors, legislators, and county commissioners, Functional government reached its zenith in the mid- and late 1960's when categorical grant programs passed the 400 mark. With each new category and sub-category, a new crop of specialists and sub-specialists was spawned at all levels of government to administer and to propagandize and few, if any, counterbalancing efforts were made to strengthen the position of the departmental secretaries, the Governors, or the mayors. The functional specialists are aided and abetted by private groups—many of them well organized and politically influential—that benefit directly or indirectly from the narrowly focused individual programs.

The program specialists in each aided field typically consult with one another in the formulation of grant regulations. Similar consultations produce draft amendments to existing legislation and draft bills for completely new programs. The passing of general political leadership is not so marked at the Federal level because plans of the specialists must receive the approval of Cabinet officers and the Budget Bureau before transmittal to the Congress. In State and local government the story is different—with elected executives and lawmakers being told that a grant is available if matching money can be raised and the accompanying package of regulations adopted. The lure of "50 cent" (or cheaper) dollars is usually impossible to resist.

Following the November 1966 elections, there ensued a rising chorus of dissent from publicly elected officials of State and local governments.

Restive State, city and county officials began urging a policy of consultation before action in the framing of Federal grant-in-aid regulations. Consequently, a Budget Bureau circular was issued requiring that drafts of grant regulations being considered by Federal agencies be submitted for review and comment to organizations of State and local government. This process got underway slowly in mid-1967, and two and one-half years later its efficacy was still questionable because too often draft regulations had become fairly well frozen before submission to State and local officials. However, accompanying this formal procedure was a growing number of productive informal conferences between agency officials and State and local organizations. This increase in consultation was due not only to growing agency cooperation but to the growing insistence and "clout" of the Washington based organizations of State and local officials. Although the purpose of the Budget Bureau effort is to help political executives get coordinating control over functional programs, its ultimate success is much in doubt.

3. THE CATEGORICAL MAJORITY

Beneficiaries of the categorical grant-in-aid system tend to oppose strongly any efforts to merge categories because they feel better able to maintain their priority status through the Congress than in fifty separate State legislatures.

Previous efforts of the Johnson and Nixon administrations to achieve a reduction in the number of separate categorical grants have not been successful, due to opposition from the sub-categorical beneficiaries involved. In effect, a Federal categorical grant with State/and/or local matching provisions represents a congressionally mandated nation-wide priority for that category in relation to other governmental functions not covered by a categorical grant.

For example, several hundred millions of dollars are now appropriated annually for vocational education. As these funds are allocated to, and matched by, the various States, vocational education enjoys a certain relative earmarking in relation to other phases of education that are categorically aided. If the vocational category were merged with the other educational categories, it would no doubt fare better in relation to the others in some States and not so well in others. As a consequence, the vocational education "lobby"—i.e. the supervisors, teachers, counselors and all other professional groups that are paid wholly or partly from grant funds—are quick to bombard Congress when any kind of grant consolidation in this area is under consideration.

In addition to opposition from catgorical lobbyists when the consolidation of particular grants is under consideration, most of these interests unite in opposition to general legislation that would provide additional flexibility to State and local governments in the administration of Federal aid or that would permit the beginnings of a revenue sharing system. The widespread network of categorical lobbyists, including not only professional organizations but suppliers of material and equipment used in the respective programs, are joined by organized labor in opposing revenue sharing. They fear the beginning of revenue sharing because of the possibility that, in time, it might displace the entire categorical aid system. Labor is fearful that its own social priorities, hammered into Federal legislation after painstaking effort, would be widely ignored by individual States and localities as they set their own priorities in the use of shared revenues.

4. THE EGO OF DECISIONMAKING

Inevitably people at the center, whether legislators or administrators, believe themselves better equipped to make decisions as to program emphasis and funding priorities among subject matter fields than the beneficiary State or local officials.

People at the center see their unique qualifications for this kind of decision making stemming from several vantage points: (a) Closeness to the "big picture," with vision unobscured by conflicting local parochial interests; (b) intimate awareness of so-called "legislative intent" in establishing or continuing the grant (and failure to pay obeisance to legislative intent twenty-four hours a day could result in future fund reductions—so say the knowing bureaucrats); and (c) knowledge of program activities on a nation-wide basis and consequently, a su-

perior ability to identify a project with so-called "innovation" or "demonstration" utility.

Also, it is a rare conversation with a Federal program administrator on this general subject that does not produce during its course a wry comment on some recent occurrence that tends to indicate inadequacy, incompetence or parochialism on the part of State or local officials in the handling of Federally aided programs. These comments are usually accompanied by sanctimonious remarks about the dire need of upgrading the capability of these governments to discharge their legal functions.

5. FISCAL IMBALANCE IN THE FEDERAL SYSTEM

Rear guard opposition to the income tax in some major industrial States is handcuffing State responsibilities in meeting urban problems and in making a shift of domestic government financing to Washington politically attractive to timid and courageous Governors alike.

States, as well as the localities, have been laboring under increasing handicaps as more of them strive to meet their responsibilities. The Federal income tax has funded a rapidly rising magnitude of domestic expenditure from the Federal budget since 1950 with actual net decreases in rates over this period. State governments, dependent upon consumption taxes and moderate- to low-rate income taxes, have had to raise rates and impose new taxes time after time in order to keep abreast of increasing educational and other domestic expenditures. Local governments have had to do likewise with property taxes and miscellaneous nuisance taxes. The political landscape has been strewn with defeated Governors, mayors, and county officials who courageously committed suicide at the polls by doing what had to be done to increase the resources of government to meet, in part at least, the escalating service demands from an insatiable (and largely unappreciative) public.

6. POLITICAL SCHISM BETWEEN MAYORS AND GOVERNORS

Emphasis given to State government under the New Federalism causes disquiet in the ranks of big city mayors; unless States and cities unite and stay united in support of the New Federalism, its legislative outlook is bleak.

It would be well at this point to examine the question of State involvement in urban affairs and try to identify the issues and concerns that often separate the Governor and Mayor.

State government has a number of possible contributions to make to urban problems generally and specifically, to furthering the objectives of present and future urban programs. (1) Leadership and action in "civilizing the jungle" of local government overlapping and fragmentation—uniquely a State responsibility; (2) planning and priority setting on a regional and State-wide basis; (3) a coordination and management focus to avoid necessity of direct Federal relations with thousands of local units; (4) provision of technical assistance; and last but not least (5) massive financial aid to cities and city problems, drawing upon general revenues of the State.

This is an impressive list. Why do not mayors and their constituents welcome state involvement with open arms? As viewed by big city mayors, the principal, and about the only advantage of State involvement, is financial. Even here, unless the added monies are considerable, the mayor may see the policy, administrative, and political liabilities as outweighing the added dollars. Mayors see major policy dangers in State involvement: A tendency to block or give lower priority to programs benefitting low income or minority groups; suburban legislative dominance and growing suburban influence on governors; and added influence of State functional departments which more often than not have a rural or suburban bias. Most big city mayors also allege that State involvement would add a "third layer" to already complicated city grant relationships with Federal agencies.

As viewed by the urban poor, some of the disadvantages of State involvement cited by the mayors obtain. However, the reaction of local poverty agencies to State involvement varies depending upon the amount of additional financial resources that might result and upon their assessment of the relative moral and political support they may expect from City Hall or the State House. (It is no accident that Newark blacks have had a much better image of the former State Commissioner of Community Affairs than of the mayor of Newark, for during the riots, one was compassionate and the other insensitive.)

7. FEAR OF THE SOUTHERN STRATEGY

Over the past several months, political and civic leadership in the nation's central cities have become increasingly worried about the depth of the Administration's commitments to help solve urban problems.

A variety of recent incidents and trends have caused many of those deeply concerned with urban problems to have doubts as to whether the Nixon Administration can find it politically tolerable to support a commitment to the urban poor and a commitment to the Southern Strategy at one and the same time. The Kevin Phillips book, the obvious political hay being reaped through Agnew speeches, the Moynihan memorandum about "benign neglect," the Haynsworth and Carswell, nominations, and the potent influence of the Attorney General in the councils of the Administration have all fueled these concerns.

Others point to the Family Assistance Plan and to the perseverance and sincerity of Secretary Romney as proofs positive of a very strong Administration resolve to cope with the urban crisis. Certainly HUD and HEW have not been found wanting in this regard, and they are the two agencies most directly concerned. Also, is mentioned the decision by Secretary Volpe—an unpopular one in many quarters—to stop building urban highways at the expense of low income housing.

Many contend that State Involvement in Federal urban programs as contemplated in the New Federalism would enable Southern State governments to freeze out programs benefitting Negroes; they point, for example, to the widespread pattern of discrimination in the administration of the food stamp program in the South whereunder many counties having a sizeable non-white population simply do not participate. There is of course little doubt that if left to their own devices a number of Southern States would not *initiate* programs primarily benefitting blacks; the question is, should any of the States—South or North—be permitted to participate, under specified conditions, as equal partners with Federal and local governments and private organizations in carrying out Federal urban programs?

In summary, the major concerns of mayors, the urban poor, and the organizations representing both, regarding State involvement is that conservative forces at the State level would slow programs down, re-direct policies, and, in the South, act in a way detrimental to civil rights. To come to grips with these valid concerns we should try to assess the extent to which programs would be slowed down or redirected along lines more conservative than those of the national Administration and the administering Federal agencies. This necessarily is a subjective evaluation and everyone's list of States somewhat different. The following tabulation is my own assessment.

Would be less conservative	More conservative	Basically no change
New York, Massachusetts, Pennsylvania, Connecticut, Hawaii, Washington, Oregon, New Mexico, Maine, Rhode Island, Michigan, Alaska, Illinois, Maryland, and Wisconsin.	Montana, Idaho, Nevada, South Dakota, Wyoming, Oklahoma, Missouri, Kentucky, Louisiana, Mississippi, Tennessee, Alabama, Indiana, and Georgia.	California, Arizona, Colorado, North Dakota, Iowa, Nebraska, Kansas, Texas, Arkansas, Ohio, Delaware, Vermont, New Hampshire, Virginia, New Jersey, North Carolina, South Carolina, Florida, West Virginia, Minnesota, and Utah.

8. THE CENTER CONTROLS DECENTRALIZATION DECISIONS

Although the President and his Cabinet may be personally and politically committed to decentralization, most of the smaller decisions going to make up the warp and woof of the New Federalism are made by the bureaucracy and by Congressional subcommittee and committee chairmen and staff directors.

The plaint of Presidents that they often do not control their own house is uniquely jutsified in regard to plans, decisions, laws, and regulations to frame, enact and implement governmental decentralization. With respect to many governmental policies espoused by any new administration, the bureaucracy may be slow moving and sometimes resistant. In the case of decentralization, the bureaucracy is personally and emotionally involved. Empires of program review and Princely States of regulation-writing are threatened to the core by revenue sharing and grant consolidation. The committee and subcommittee fiefdoms are most unfriendly. Even when decentralization legislation is passed on occasion, through the combined persuasive efforts of governors, mayors and the political leadership of the Executive Branch, its implementation must depend on regulations drafted by the bureaucracy, and strings and conditions appear as by magic.

We will all agree that the New Federalism faces a number of hazards—a technologically-dictated larger Federal role in American society; a functionally and ego-involved bureaucracy allied with special interests to create a categorical majority; sporadic internecine warfare between mayors and governors; suspicious big city political and civic leadership and the urban poor; and reluctant Congressional committees and subcommittees.

Now we come to the crucial point of our inquiry. If these hazards are to be surmounted, what kind of things must occur? In the first place, generalities of the New Federalism must be replaced with further specifics, especially with regard to urban affairs, because it is in the great urban areas that much of the doubt and resistance about the New Federalism exists. There must be developed a national intergovernmental strategy to help bring about a great sweep of State and local action that will make the New Federalism not only a policy for the national government but for the nation as a whole.

Some of the components of such an overall policy are fairly easy to identify, but very difficult to obtain. A summary of them will convey a sense of the scope and depth that is necessary if the New Federalism is to truly move from the realm of the rhetoric into the world of reality.

(1) ADOPTION OF EXPLICIT NATIONAL AND STATE URBAN GROWTH POLICIES

There must be formulated some conscious public policies which can accommodate the tremendous scale of urbanization and redevelopment bound to occur over the next few years. To continue to leave this pattern to chance and to competitive and contradicting policies of thousands of local governments is to invite economic and social chaos.

At a minimum, such a national urbanization policy would assure that individual Federal programs did not operate contrary to national goals. Some possible new components for such a policy would include financial incentives for industrial location in large city poverty areas and rural growth centers; migration allowances to facilitate population movement from labor surplus to labor shortage areas; preference in the award of Federal contracts to areas to which it is desired to attract population and similar preferences in the location of public buildings and other facilities; expansion of governmental assistance for family planning information to low income families; and initiation of new types of Federal support, under certain conditions, to large-scale urban development and to the creation of new communities.

State urbanization policies would be expected to include components comparable to those suggested for a national policy with the extremely important addition of a State land development agency empowered to acquire, hold, site develop and sell off land to private developers for use in accordance with the State's urbanization policy and with State, regional and local land use plans.

(2) FEDERAL INCENTIVES FOR LOCAL GOVERNMENT MODERNIZATION

Federal carrots and sticks should be provided to assist State legislatures and governors over the very difficult hurdles standing in the way of modernizing the structure of local government in metropolitan areas so that government services can be provided economically, efficiently and with fiscal equity.

Only the State governments have the power to rationalize and render less harmful to orderly urban development the complex array of overlapping local governments that characterizes most of the country's major metropolitan areas. This herculean task requires State constitutional and statutory changes along the following lines:

Removing the shackles that frustrate local efforts to marshal the resources required to meet local needs by clarifying the legal powers of general-purpose local governments, authorizing them to determine their own internal structure, modernizing out-dated means of controlling local government tax and debt levels, and liberalizing municipal annexation procedures.

Arming local governments with an "arsenal of weapons" for meeting the challenges of urban growth by facilitating county consolidation, authorizing counties to perform urban functions and to establish subordinate service and taxing areas, empowering major cities and urban counties to create neighborhood "sub-units" of government in order that disaffected citizens may be brought closer to and involved in the process of local government, permitting voluntary transfer of functions between cities and counties, granting authority for intergovernmental contracts and joint service arrangements, encouraging the establishment of metropolitan study commissions, providing for metropolitan functional authorities that offer services requiring areawide handling, and authorizing regional councils of elected officials.

Halting the proliferation of special districts and small nonviable units of local government in metropolitan areas. In the case of tiny localities, this means establishing rigorous standards for the incorporation of new municipalities, empowering State or regional boundary commissions to consolidate or dissolve nonviable units, and revising State-aid formulas to eliminate or reduce aid allotments to local governments that do not meet statutory standards of economic, geographic, and political viability.

In the case of special districts, this means making them harder to form and easier to consolidate or eliminate, increasing their "visibility" and political accountability, and requiring them to coordinate their operations with those of counties and municipalities.

(3) FEDERAL INCENTIVES FOR INCREASED STATE INVOLVEMENT IN URBAN AFFAIRS

Long overdue is a selective, logical approach rather than a universal dogmatic, and emotional attitude toward the role of State governments in urban affairs; increased reliance must be placed upon those States that are demonstrating by deeds as well as words their readiness to commit State efforts and resources to the urban crisis.

The following specific steps are suggested for State and Federal action:

Establishment of State departments of urban or community affairs. Only by first providing administratively for a continuing concern and activity regarding urban affairs can the State government hope to manage a large-scale involvement in the problem of its cities. Such departments can also provide a focus of technical assistance to smaller municipalities and counties within the State. Over half of the States have now done this.

Financial underwriting of urban functions. The States must begin to pay part of the bill for urban redevelopment, housing code enforcement, mass transit, and other major urban functions just as they have been paying for years a part of the bill for State agricultural experiment stations, county agents and rural roads. This, of course, requires a politically painful realignment of expenditure priorities within the State, but until it is done, "one man-one vote" is an empty phrase, and the chance for a strong State role in the American federal system of the future is diminished.

Channeling of Federal urban grants through the States under certain conditions. The Congress and the Federal Executive Branch must become selective in laying down patterns of intergovernmental relations surrounding Federal grants and must stop treating States like New York, Pennsylvania, and California in an identical fashion to less urbanized and under-developed States like Alabama, Mississippi, and Wyoming. Federal funds for urban purposes should flow through the State where, and only where, two basic conditions are met: The State provides adequate administrative machinery and supplies from State general revenues at least half the non-Federal share of the required funds. If the State chooses not to meet these two conditions, a Federal-local relationship should obtain with respect to the particular program. If it chooses affirmatively, then the existing Federal-local relationship would be changed to a Federal-State relationship.

The foregoing actions suggested as the urban portion of the New Federalism (in addition to the Family Assistance Plan and revenue sharing) may be objected to on the ground that the Federal budget cannot afford it. Such a reply will not and cannot enjoy credibility in the nation's troubled cities—not when six billions a year are committed to farm price supports and related agricultural subsidies; not when three billions a year are committed to lunar and interplanetary exploration; not when several billion are committed over the next few years to an economically dubious and environment polluting SST; and not when untold billions and uncounted lives are committed to an ever-expanding war in Asia.

In addition to the major policy initiatives suggested above there are a number of very critical administrative elements that must be pushed relentlessly if the President's New Federalism is to be made to work. These include:

Passage through the House of the Intergovernmental Cooperation Act of 1970, permitting joint funding of grant programs and grant consolidation authority for the President subject to Congressional veto;

Vigorous implementation of the Intergovernmental Cooperation Act of 1968;

Simplification of State plan requirements that accompany many existing Federal aid programs;

Consolidation of water and sewer grant programs, a scandalous example of grant proliferation and overlapping and

Resolution of the conflicting and confusing roles of the local community action and model cities agencies and programs.

In summary, we can see that the New Federalism has a difficult road ahead. Despite some supportive influences and a favorable political climate, the built-in factors of opposition, inertia and apathy make its enactment questionable and ultimate implementation throughout the federal system even more doubtful. If meaningful governmental decentralization cannot be achieved at this stage of the swing of the political pendulum, then the long range prognosis is poor.

The New Federalism is in danger of bogging down through preoccupation of the nation with national security and through hesitancy to make the kind of policy and fiscal commitments essential if it is to acquire and maintain a credibility sufficient for enactment.

For the Nixon Administration, the stakes are high; if the rhetoric of the New Federalism is translated into reality, then the gates of a road to an historical accomplishment will have opened; if only the rhetoric survives, then a turning on the other road will have been taken—the road to mediocrity or failure in coping with the major domestic necessity of the times—namely, the restructuring and re-ordering of our National, State and local institutions of government to render them equal to the needs and aspirations of the American people in the demanding, turbulent, and perilous years that lie ahead.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. ALLEN). Is there further morning business? If not, morning business is concluded.

DIRECT POPULAR ELECTION OF THE PRESIDENT AND THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. ALLEN). The Chair now lays before the Senate the unfinished business, which the clerk will state.

The legislative clerk read as follows: Senate Joint Resolution 1, proposing an amendment to the Constitution of the United States relating to the election of the President and the Vice President.

The Senate resumed the consideration of the bill.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr.

GRAVEL). Without objection, it is so ordered.

Mr. BAYH. Mr. President, the pending order of business now before the Senate is Senate Joint Resolution 1, which has been cosponsored by 40 Members of the Senate, including the present occupant of the Chair, the distinguished Senator from Alaska (Mr. GRAVEL).

Senate Joint Resolution 1 would provide basic electoral reform for this country, to prevent it from being confronted with the constitutional crisis which would be precipitated if certain shortcomings of the present electoral college system allow it to malfunction, as they have in the past and as they nearly did in 1968.

This matter was introduced into the Senate as one of the first items of business in January 1969. That is why it bears the title Senate Joint Resolution 1. It was considered at length and passed by the House by a 339 to 70 vote. It has been studied and discussed by some of the most prestigious groups in the country, including the American Bar Association, the Chamber of Commerce, the AFL–CIO, and the UAW. The League of Women Voters studied it for over a year, and after a year of study by its members, over 80 percent of its league chapters endorsed this basic constitutional reform of the present presidential election system.

The whole thrust of this reform is rather fundamental and elementary; the people of America should be given the right to vote for their President. That is about as simply and as accurately as the present proposition can be expressed.

Yet, despite the fact that Senate Joint Resolution 1 has been in the Senate process since January 1969, we have not yet been able to have the matter put to a vote. Senate Joint Resolution 1 has been the pending order of business of the Senate since September 8. This is the 11th day of active debate and consideration. I think the RECORD should show that this is as long a period of time as any other constitutional amendment in this century has been discussed. It is significantly longer than that of any amendment save the 24th amendment, the poll tax amendment, which was discussed for 11 days. This is the 11th day of debate on this particular issue.

As major a constitutional reform as the income tax amendment was only debated in the Senate for 1 day. To suggest that we have not had a sufficient time to discuss a matter of this consequence really does not comport with the attention that has been given to other constitutional amendments.

Mr. President, the proponents of Senate Joint Resolution 1, I think, have had adequate time and have taken advantage of the time in which to present the case for the amendment.

Those who are opposed suggest that they have not yet had adequate time. I am hopeful that they will take advantage of this opportunity and use the right that every Senator has to dissent and discuss any opinion they may have about electoral reform. This is one of the strengths of this body.

I must say that I find it difficult to reconcile what appear to be inconsistencies in various statements that have been made. The day before the vote on the cloture motion was taken, one of our distinguished colleagues suggested that there were 10 speakers on this subject to be heard from. Yet, to my knowledge, we have not heard a full presentation of views in opposition to Senate Joint Resolution 1 from one of these 10 speakers.

Yesterday a very distinguished Member of the Senate who is opposed to the measure suggested that he had a full and comprehensive—and knowing that particular Senator, I am sure a persuasive—speech to make. Yet, he suggested yesterday that he was not going to make that speech.

I think it is only fair to ask where those opponents are. Where are those who suggest that there are compelling reasons not to give the people of America the right to vote for their President?

Let the people have the benefit of their advice and counsel and wisdom.

I read with some interest the stories in the morning press which stemmed from the remarks the Senator from Indiana made yesterday. Most of these stories have given a true picture of what is happening.

I note with a great deal of interest that one of the headlines suggests that the Senator from Indiana threatens to shut down the Senate.

I would like to suggest that the Senator from Indiana is not threatening. The Senator from Indiana really has no desire to close down the Senate. The Senator from Indiana feels that those of us who are concerned about the possible malfunctioning of the present electoral college system have an obligation to permit the country to know what is really happening in the U.S. Senate.

It is not the Senator from Indiana or the Senator from Alaska or any of the other proponents of basic constitutional reform who are in the process of denying action in the Senate or closing down the Senate. Instead it is a handful of opponents of Senate Joint Resolution 1 who are denying the Senate the opportunity to vote on this issue. The Senator from Indiana intends to take whatever means are necessary to make this apparent to the country.

The time has come, it seems to me, that we must rip away some of the veneer and get to the heart of the matter. The heart of the matter is that we are not being permitted to vote on a critical matter which is pending before the Senate.

The Senator from Indiana would like to propose a series of unanimous-consent requests to see if in the last 24 hours there has been an increase in the benevolence or an increase in the desire to be accountable on the part of the opponents of Senate Joint Resolution 1, to see if we can start moving ahead, to see if we can start moving on some type of basic electoral reform.

UNANIMOUS-CONSENT REQUESTS

Mr. President, I ask unanimous consent that at 1 o'clock tomorrow the Senate vote on the Griffin-Tydings amendment, which is amendment No. 711.

Mr. DOLE. Mr. President, I object.

Mr. ERVIN. Mr. President, I object.

The PRESIDING OFFICER Objection is heard.

Mr. BAYH. Mr. President, I ask unanimous consent that at 1 o'clock on tomorrow the Senate vote on amendment No. 878, the Griffin amendment, and then proceed on the following day at 1 o'clock to the final consideration of the resolution.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Indiana?

Mr. DOLE. I object.

Mr. ERVIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BAYH. Mr. President, I ask unanimous consent that on tomorrow at 1 o'clock the Senate vote on the Eagleton-Dole proposal, amendment No. 884.

Mr. ERVIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BAYH. Mr. President, I ask unanimous consent that on tomorrow at 1 o'clock the Senate vote on the amendment of our distinguished chairman of the Judiciary Committee, the Senator from Mississippi (Mr. EASTLAND), relative to a 50-percent requirement on the runoff. That is amendment No. 885.

Mr. ERVIN. Mr. Presdent, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. BAYH. Mr. President, I ask unanimous consent that on tomorrow at 1 o'clock the Senate proceed to vote on amendment No. 887, the amendment of the distinguished Senator from Missouri.

Mr. ERVIN. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. BAYH. Mr. President, I ask unanimous consent that on tomorrow at 1 o'clock the Senate proceed to vote on amendment No. 897.

Mr. ERVIN. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. BAYH. Mr. President, there are six other amendments. So, I will propose a joint unanimous-consent request.

Mr. President, I ask unanimous consent that on tomorrow at 1 o'clock, with the period of time to be decided by both amendments Nos. 898, 899, 900, 901, 905, 912, and 913.

Mr. ERVIN. Mr. President, I object at this time.

The PRESIDING OFFICER. Objection is heard.

Mr. ERVIN. Mr. President, I would like to advise my distinguished friend, the Senator from Indiana, that as soon as I can consult with other parties and get a printed copy of an amendment which I submitted this morning, we may oblige the Senator with a vote.

The amendment I submitted this morning would do everything that the Senator says he wants to do.

My amendment would allow every voter to vote for president and vice president instead of for presidential electors. It would abolish the office of presidential elector. It would keep the electoral votes of States as they now exist, but would divide the electoral

votes among the presidential and vice presidential candidates in accordance with the popular vote in each State.

I do not believe in 40 percent Presidents as the resolution of the Senator from Indiana would provide.

My amendment would provide that the candidate who receives the majority of the electoral votes cast by the people directly for President or Vice President would be President or Vice President respectively.

It would further provide that in the event no one received a majority of the electoral vote, the Senate and the House of Representatives, sitting in joint session, by a majority vote—each Senator and each Representative having one vote—would decide the matter.

It would do everything that the resolution of the Senator from Indiana would do in practical effect, except to convert 184,000 separate precincts into one great big precinct where any fraud or any miscount of votes or any breakdown of a voting machine would not put the question of electing the President in jeopardy for months and months and would not require a runoff election.

Unfortunately, unlike my distinguished friend from Indiana, Members of the Senate who share my views do not have a single leader. They have many chiefs and many generals; and perhaps not as many Indians or as many sergeants, corporals, or privates, as may be desirable. But I assure my friend from Indiana I will do all I can to get him to vote on that amendment when it is printed and available to all Senators. I introduced it this morning.

The PRESIDING OFFICER. Objection is heard on the unanimous-consent requests of the Senator from Indiana.

Mr. BAYH. Mr. President, I appreciate the desire of the Senator from North Carolina to move forward on this. It is rather interesting. I do not know the specifics of the amendment presented by the Senator from North Carolina but it sounds strangely like an amendment he just objected to considering and voting on tomorrow.

Mr. ERVIN. Mr. President, the only thing different in this amendment from the amendment the Senator from Indiana had before him as a member of the Committee on the Judiciary, and my pending amendment 901 is that this amendment requires a majority President. I do not believe in having a 40-percent President; I believe in having a majority President. I do not believe that a 40-percent President could command more than 40 percent support from the country and I do not think a President with 40 percent support can readily discharge the duties of the Presidency.

That is the only difference between the amendment which I introduced this morning, and which will be printed and placed on the desks of all Senators in the morning, and amendment 901, which is identical with an amendment proposed by me in the Senate Judiciary Committee and which has been pending about as long as Senate Joint Resolution 1 has.

I thank the Senator.

Mr. BAYH. I appreciate the Senator from North Carolina explaining it. In other words, instead of the amendment 901 approach, the Senator would require a majority of the electoral vote.

Mr. ERVIN. That is right; to be determined by the people who vote directly for President and Vice President.

Mr. BAYH. And if there is not a majority of the electoral vote?

Mr. ERVIN. All the Senators and Representatives, sitting down together in a joint session——

Mr. BAYH. A majority of electoral votes?

Mr. ERVIN. Yes.

Mr. BAYH. Not a majority of the popular vote.

Mr. ERVIN. That is correct. But the electoral vote will be a direct reflex of the popular vote in every State because every person would vote directly in his State for President and Vice President.

Mr. BAYH. Is the Senator from North Carolina telling the Senate his proposal will guarantee a majority of the people supporting the President?

Mr. ERVIN. No, and neither will the Senator's amendment guarantee that any choice of the President will be a free choice of the majority. Many persons will not come out and vote, some will have sold their votes, and many will have been dragged to the polls on one deceptive pretext or another. The Senator's amendment will not guarantee that the President chosen is the majority choice of the people for another reason. The number of people who go out to vote does not always depend on who is running for President or Vice President. Many times the number depends on a hot contest for the governorship of a particular State or a Senate seat in a particular State, or a hot contest in respect to matters submitted to a referendum. Indeed, the number might even depend on a hot contest between opposing candidates for local office in metropolitan centers.

My amendment will come pretty close to guaranteeing that under ordinary circumstances the man who becomes President is not only the choice of the majority of the people in a majority of the States, but he is also the choice of the majority of the people in the entire United States. It does not require any two elections, or two campaigns and the expenditure of millions and millions of dollars to conduct two elections, to assure that the United States will remain a Republic and not be converted into a totalitarian aggregation of individuals as Germany was when Germans elected a President by direct popular vote and got Adolf Hitler as Fuhrer and the world got World War II as a consequence because Hitler became the actual head of state.

The Senator's amendment would also make it certain that the two major parties would not continue to function as such, and that there would be a proliferation of splinter parties, such as has disabled France in her ability to function efficiently as a country for almost a generation.

Mr. BAYH. Mr. President——

Mr. ERVIN. I am just explaining the amendment.

Mr. BAYH. Mr. President, I appreciate that the Senator is just explaining the amendment, but the Senator is doing so in a way that is not normally his custom. He is a good student of history but he must have gotten his pages upside down or read from some novel as to how this would work compared with other countries.

We might as well put to rest this straw man of Nazi Germany or the proliferation of parties in other countries as a misassessment of the facts. The facts are that Hitler did not come to power in Germany under a popular vote. He came to power by a vote of the legislature in Germany.

Mr. ERVIN. No.

Mr. BAYH. And the Senator is suggesting we have a joint session, or the same thing that brought Adolf Hitler to power.

Mr. ERVIN. No.

Mr. BAYH. The Senator would suggest that von Hindenburg was elected. He got rid of the popular vote; he got in control of the Third Reich.

Mr. ERVIN. In Germany they elected the President by popular vote and the President made Hitler the Prime Minister.

Mr. BAYH. The Reichstag, by vote of the legislature; by the vote of the legislature.

Mr. ERVIN. Yes; he may have been confirmed by the Reichstag.

Mr. BAYH. By the legislature of Germany. The very plan the Senator has set forth here as a panacea is what brought the little corporal to power. To suggest otherwise is distorting history.

Mr. ERVIN. No.

Mr. BAYH. Another claim that needs to be laid straight is the assertion that this will cause a proliferation of the parties, like in Europe. It is all right to suggest that certain things are going on in other countries that we do not like, but it does not follow that the same thing would go on here as in other countries. I suggest the Senator read Senate Joint Resolution 1.

We have a provision that the Senator from North Carolina does not like. The Senator has criticized the 40-percent provision.

Mr. ERVIN. Yes.

Mr. BAYH. It is in there to keep from prevent the proliferation of parties we have seen in France and other countries. If the Senator does not want such a proliferation he should not criticize that 40-percent provision. In France, in the last election, if they had had a 40-percent provision there would not have been a runoff and they would have had the same winner.

I suggest that if the Senator is going to try to set up straw men, at least he should tailor them a little more to the facts than he has. He usually is factual and tenacious in seeing that everything said relates directly to the facts. I am sure he did not intend that, but he said that.

Mr. ERVIN. I would like to thank the Senator for his instruction in history, and I would like to ask him if there is any tuition fee for it.

Mr. BAYH. The Senator from Indiana is hardly in a position to charge tuition for his suggestion to the Senator. True

knowledge is free. If the Senator from North Carolina wants to learn from the operation of knowledge, the Senator from Indiana is not going to charge a tariff.

I suggest, and I want the RECORD to show that the Senator from Indiana has the greatest respect for his friend and colleague from North Carolina. I have joined him in his courageous stands on several issues. But the Senator from North Carolina is wrong to suggest that the facts stated by the Senator from Indiana are inaccurate.

At an early date I shared the concern and still share the concern of the Senator from North Carolina that we not have a proliferation of our parties. The RECORD will show and the committee record will show the Senator from Indiana was not persuaded to support direct popular vote until this matter of party proliferation could be laid to rest.

The 40-percent provision, which denies splinter parties the opportunity to keep major parties from being victorious on the first ballot, is one of the main reasons why the Senator from Indiana enthusiastically supports Senate Joint Resolution 1.

Mr. President, I suggest that, although my friend from North Carolina suggests that his amendment be considered, it is similar to ones that have been proposed earlier. This is not a new, novel proposal made by the Senator from North Carolina. It has been discussed in this body and acted on; hearings have been held on this type of proposal. It does not provide that a majority of the people shall elect their President.

If there are people in this body who feel that is important, then let them come forth with an amendment that provides that a majority of the people shall elect their President. So far, there has been only one man who has done that, and it is the Senator from Mississippi. No one who has stressed the weakness of the 40-percent provision has proposed that the people of the country should have the opportunity to elect their President, save the Senator from Mississippi.

Let me stress that if we require a pure, mathematical majority, we are going to deny men like Richard Nixon access to the White House, we are going to deny men like Harry Truman access to the White House, we are going to deny men like John Kennedy access to the White House and we are going to deny men like Woodrow Wilson access to the White House.

The country has had, and does have, Presidents, and some of them have been outstanding Presidents, who were not the choice of the majority of the people. But the cardinal sin of the proposal of the Senator from North Carolina is that it does not even guarantee that the man who is President of the United States gets the most votes. In fact, using the proportional plan, Richard Nixon would have been elected President instead of John F. Kennedy in 1960. I can also cite the case of William Jennings Bryan. Presidents would have been elected who had fewer votes than the men they were running against, under the proposal of the Senator from North Carolina.

The proposal of the Senator from North Carolina does not guarantee that everybody's vote counts the same. Let the RECORD show that. Although I hope we have a chance to vote on the proposal of the Senator from North Carolina, it certainly does not deal with the basic concern of the Senator from Indiana. I think we need to let the people vote for their President. I think we need to guarantee that each vote counts the same. I think we need to guarantee that the man who wins gets the most votes. The fact is that our proposal for direct, popular vote is the only plan that guarantees that.

To those who are concerned about the runoff, let the Senator from Indiana stress what he said before. I share that concern. I said earlier I am willing to consider alternatives. In fact, one of the proposals made by the Senator from Indiana, which was objected to by the Senator from North Carolina, was to come to the consideration of the Tydings-Griffin amendment, which would eliminate the runoff. Perhaps there is a better proposal for eliminating the runoff, but I do not think we can be against the runoff and be consistent unless we permit action on something to remove the runoff.

The Senate is now being refused the right to amend Senate Joint Resolution 1 to take the runoff out of there, and the RECORD ought to show that.

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

Mr. BAYH. I am glad to yield.

Mr. ERVIN. If the Senator from Indiana wants the Griffin-Tydings amendment, all he has to do is modify Senate Joint Resolution 1 and accept it.

Mr. BAYH. With respect to the plan of action recommended by the Senator from North Carolina, let the Senator from Indiana suggest that he is advised that once a proposal is reported out of committee, it takes floor action to amend it. If the Senator presents it on the floor as his own amendment, then he can get it modified.

Would the Senator from North Carolina not object, and would other Senators not object, if the Senator from Indiana moved to revise Senate Joint Resolution 1 and to accept the Tydings-Griffin proposal?

Mr. ERVIN. At the present time I would object.

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

Mr. BAYH. I yield.

Mr. PASTORE. I would hope, if we did accept the modification, we could at least have a vote on the resolution itself once we had accepted the amendment. I think the trouble has been that for one reason or another there has been a strategy of delaying tactics. Here we are pretty close to the month of October, only about 45 days away from a very important election. There are some in this body who are not running for election but there are some who are. We have tried earnestly to set up our schedules in such a way that we might be able to adjourn sine die by the middle of October. Even then, that would give most of us only 2 weeks really to go home and do some campaigning.

It seems to me that, the way we are proceeding, we cannot finish this business by an October deadline; and I cannot for the life of me see why we cannot come back after election day and finish our business. I think that needs to be done. After all, it is important to the country what the composition of the Senate will be come January 1, 1971. One-third of us are up for reelection. The entire membership of the other body is up for reelection. Here we have been 2 weeks on the joint resolution. I cannot see why, as reasonable people, we cannot sit down and resolve our problems. We are always critical of other nations because they cannot agree. We are always critical of other people in the world because they cannot sit down and talk and agree. It strikes me that all we do is talk and talk and seem never to reach conclusions.

I have heard talk on this subject before. This is not something new. The proposal for reform of the electoral college and for popular election is an old chestnut. Long before the Senator from Indiana came to the Senate, the Senator from Rhode Island suggested on the floor that we have popular elections. I made the argument then that we were a country of people and not a country of geographic boundaries. I think we should follow the century old adage—of the people, by the people, and for the people; and then let it really be by the people. That is all it amounts to. We engage in all this rigmarole going back and forth as to whether we are going to agree to that or agree to this. I think the issue is very simple. We ought to come to a vote.

I do not know whether the drive is to keep us here until election day. I do not think that is fair to those of us who are up for reelection. I know we have to do our job here. The Senator from Rhode Island does do his job. After working here all week I had to go home and deliver 14 speeches this last weekend. That is a pretty strenuous program after spending a week of extended sessions here in Washington. I think this is unfair. I think the Members of the Senate should take this into consideration. We ought to look at ourselves in the mirror once in awhile and see what we are doing to other Senators.

This procedure could go on 2 or 3 weeks. It looks like it is going to go on ad infinitum—which means forever, if I may chance the translation. I think we ought to sit down as reasonable men, because, I tell Members of the Senate from my contacts back home, the image being created here could be bad for the Senate and the country.

The people of this country want our problems resolved, and here we are; we come here and talk from 10 o'clock in the morning until about 7 or 8 o'clock at night, we keep repeating the same thing over and over again, and we never come to a vote.

I am not trying to stampede anyone into a vote, but it strikes me that on a proposition of this kind, after we have

talked about it for 2 or 3 weeks, we ought to come to some solution, because if we cannot solve this problem, then God help us on all our other problems.

I thank the Senator for yielding.

Mr. BAYH. The Senator from Indiana is impressed, as always, by the eloquence and good judgment of the Senator from Rhode Island. I must say for the RECORD that although the Senator from Rhode Island had to make 14 speeches over the weekend that certainly has not limited the power and persuasiveness of the message he brings to the Senate. I, for one, appreciate it.

As I have said before, although I find myself in the middle of the bull's eye on this issue of the popular vote, there are those in this body like the Senator from Rhode Island, the Senator from Maine (Mrs. SMITH), our majority leader, and others who have favored direct popular election for some long period of time.

I want to say just one last word, and then I hope that some of those who have not yet had the opportunity to adequately express themselves on this issue in opposition, and thus are in the process of denying us a vote, will give us the benefit of their wisdom.

Yesterday, we were told by one Member of this body that he or others were prepared to stay here until the snow flies to keep us from having the opportunity to vote on this matter. Mr. President, I do not know whether this could accurately be described as a threat or not, but the Senator from Indiana does not take well to intimidation, or to the suggestion that certain types of parliamentary coercion should prohibit the Senate from voting on an issue.

I think the Senator from Rhode Island is absolutely right. The people of this country are looking to this body to see whether we have the courage to stand up and be counted on an issue that almost brought our Nation to its knees in 1968. I think the whole world is looking at us. I think we have the responsibility, as Members of this body, to show the rest of the world that we are going to let the people's will decide, that we are not going to let a few men, hiding behind the excuse that they have not had a chance to be heard, prevent the Senate from voting.

So, Mr. President, I suggest that we need to make accountable to the Senate and to the country those who would deny the Senate an opportunity to work its will. We presently have before us an important matter, the Clean Air Act. I see in the Chamber the distinguished chairman of the Committee on Public Works (Mr. RANDOLPH), and I know of his interest and concern for that matter.

We have other items of important public business—Labor and HEW appropriations, the Department of Transportation appropriations, the military construction appropriations, the foreign aid appropriation, the equal rights for women amendment, the family assistance plan, and social security proposals.

We have other items, such as the Law Enforcement Assistance Act, the consumer protection legislation, equal employment opportunity amendments, Federal highway legislation, Department of Defense appropriations, the HUD appropriation, and a whole raft of supplemental appropriation bills.

Mr. President, I do not for a moment suggest that any Member of this body should forfeit his rights, nor do I question the motives of those who disagree, but I think the time has come for those who are filibustering against direct election to be held accountable for the fact that they are not just holding up direct election, but they are holding up the entire business of the Senate, and seriously damaging the business of the country.

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

Mr. BAYH. I am glad to yield to the Senator from Kansas.

Mr. ERVIN. Mr. President——

The PRESIDING OFFICER. The Senator from Indiana has the floor, and has yielded to the Senator from Kansas.

Mr. DOLE. Let me say that I have listened with great interest to the exchange between the Senator from Indiana and the Senator from North Carolina and, as one who desires electoral reform, I am not certain just when a filibuster develops; but I have not yet spoken on the subject, and have been prepared to do so for about 10 days. I am not certain how I may vote on cloture the next time around, but there are those of us who sincerely hope there can be some electoral reform, and who wish to participate in debate and make statements on our positions, and we have not yet had a chance to do so.

Perhaps, after having such opportunity, our views on cloture may change.

Mr. BAYH. Mr. President, I thank the Senator.

Mr. PASTORE. Mr. President, will the Senator yield on that very point?

Mr. BAYH. I yield.

Mr. PASTORE. I did not say anyone was wasting time. We are putting in long hours—and gladly, and we have earned the right of reaching a decision. The Senator from Kansas knows, as a former high official of his own State, that there comes a time of judgment; and we have been at this thing for a long, long time.

Let us face it. This, of course, is a serious issue, but a very simple one. I do not know what has deterred the Senator from Kansas from being able to make a speech for 10 days. I know I did not block it. There has been ample time to make speeches.

But all I am saying here is, goodness gracious, at some point let us come to a vote. If Senators have amendments, let us bring them up and vote them up or down. Let there be an expression of the will of the Senate. That is all I say. I am not undertaking to castigate anyone; I am just saying we are beginning to look silly in the eyes of the country.

Mr. BAYH. Mr. President, I might make one observation in response to the remarks of my distinguished colleague from Kansas.

I think it would be wrong for any of us to impugn the motives of any of our colleagues. Although the Senator from Indiana has become irritated and frustrated and, as one who never gets angry, has come very close to anger, he has not for a moment impugned the motives of any of his colleagues. Nor does he suggest that they should forfeit their rights.

Further, I would like to make it very clear that I agree with the Senator from Kansas that there are some Members of this body who sincerely want a chance to be heard a bit further, and to have the opportunity to explore some of the complexities of the issue before us. The Senator from Kansas, as the RECORD will show—although the Senator from Indiana has not always agreed with his position on this issue—has shown enough interest to pursue the matter in some detail, and, indeed, to get involved in a very thorough study, and to make a concrete proposal, which is probably the first really new proposal that has been laid before this body on the whole business of electoral reform.

I do not fully agree with the Senator from Kansas, but I certainly cannot deny the fact that he has explored a number of ramifications of it.

So there are some who legitimately want a further chance to be heard. But, Mr. President, I think the RECORD will also show that there are some Members of this body who say they want to be heard, and have been standing on the floor of the U.S. Senate and have refused to make a speech that they say they have to make on the subject.

I think we need to divide fish from fowl. For those who want a legitimate chance to be heard on this issue, the Senator from Indiana is prepared to exercise his rights in such a way that they will have that opportunity. But I must say the Senator from Indiana is not yet convinced that that opportunity will deter all Members of the Senate from wanting to keep the Senate from voting.

Did the Senator from North Carolina wish me to yield? I am prepared to yield the floor, and I hope that the Senator from North Carolina has that speech ready today that he said he had ready yesterday, but decided not to deliver.

Mr. ERVIN. Mr. President, I should like to point out that this body spent 7 weeks, or about 7 weeks, in May and June, discussing what kind of an order the President ought to issue to the troops in Vietnam with respect to whether they should be permitted to cross the Cambodian border or not. We spent approximately 5 weeks in July and August during which we debated the question of what day the American forces should be withdrawn from Vietnam. We have spent 2 weeks on this matter theoretically, but actually we have not. We have done more work, have passed more bills, during the 2 weeks we have been theoretically on this proposal than the Senator from North Carolina can recall having been passed at any other similar period of time within the 16 years he has been a Member of the Senate.

Amending the Constitution is serious business. Hence, the Senate should stop and discuss the question for a reasonable period of time. A great constitutional scholar, Professor Black, of Yale Law School, has said that Senate Joint Resolution 1, if adopted, would be the most radical amendment ever placed in the

Constitution of the United States, because it would change our whole system of government. Mr. Theodore H. White, a great scholar in this field, has stated that he could not imagine a worse calamity to this country than to have popular elections of Presidents, which would, in essence, convert 184,000 voting precincts into one great, big voting precinct.

The Senator from North Carolina suggested some time ago that controversial matters such as this should go over to January, when they could be given due consideration in an atmosphere of calmness, when the Senate is not attempting to wind up its affairs, and when one-third of the Members of the Senate are not out campaigning for reelection. I think that would have been a rational way in which to seek a proper solution to this question.

But the Senator from North Carolina does not care to prolong discussion at this time. The Senator from North Carolina does not claim that he has absolute possession of all the truth on this or any other subject and that those who are opposed to him have no truth whatever on their side; but he does think that the matter is a debatable matter and that we at least ought to spend a reasonable time debating it. The Senator from North Carolina has taken very little time in this discussion.

Mr. ALLEN. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I am glad to yield to the Senator from Alabama.

Mr. ALLEN. As the junior Senator from Alabama reads the resolution of the distinguished Senator from Indiana, it provides that the resolution, the change in the Constitution, shall not become effective until 1 year after the first April 15 following the ratification of the amendment by 38 States. Is that correct?

Mr. ERVIN. I believe that is what the amendment provides.

Mr. ALLEN. Would that not make it physically impossible to have this amendment applicable to the 1972 presidential election?

Mr. ERVIN. In my judgment, yes.

Mr. ALLEN. This amendment would have to be ratified by 38 States prior to April 15 of next year.

Mr. ERVIN. Not only would it have to be ratified by 38 States, but also, depending on how Nebraska, with its unicameral legislature, voted, it would have to be ratified by not less than 75 and possibly as many as 76 separate, independent legislative bodies in 38 States, before it could become a part of the Constitution; and I do not believe that that could be done prior to the 1972 election.

Mr. ALLEN. The question then occurs to the junior Senator from Alabama, if the amendment, even though ratified, could not apply to the 1972 election, what is the hurry?

Mr. ERVIN. I see no reason to hurry when it comes to changing the organic law which lays down the basic rights and the basic responsibilities of more than 200 million Americans. I think the Senate should give great consideration to this matter. I do not think we ought to amend the Constitution in such a drastic manner in the closing days of a congressional session, when at least one-third of the Senators primarily have their minds, as the distinguished Senator from Rhode Island indicated, upon the election.

At one time, I was called upon, as a judge, to define what a fair trial was. I defined a fair trial to consist of the trial of the issues before an impartial jury and an impartial judge, in an atmosphere of judicial calm. I think that matters of this kind should be decided in the same way by the Senate of the United States. I think we should have a time when we can be calm, when we can be deliberate, and when we can act as reasonable men, and not be in a hurry to try to change the organic law of 200 million people and the organic law which is to govern the untold generations of millions and millions of Americans who will come after us.

Amending the Constitution is a serious business. It is not amended for a day. If we make a mistake in amending the Constitution, we cannot recover from it as we could from a bad act of Congress. We could repair our error only by a new amendment. An amendment may remain a part of the Constitution until the last lingering sound of Gabriel's horn trembles into ultimate silence.

I think that our duty to the American people requires that we consider this matter in a calm and deliberate atmosphere. If we are going to do anything let us be certain that it is wise. Amending the Constitution is not a task which should be performed by harried and hurried Senators.

Mr. ALLEN. I ask the distinguished Senator a further question: Is it not true that the Senate itself in the past has passed an entirely different version of an amendment to the Constitution providing for the election of the President? Did it not at one time submit the proportional plan?

Mr. ERVIN. Substantially the amendment I am now proposing was passed by the Senate some years ago by a majority virtually as overwhelming as the House version of Senate Joint Resolution 1 received in the House. Having been a former Member of the House, I know that on final passage the many House Members vote for things they hope the Senate will correct, and I think they did that in this instance.

Mr. ALLEN. Did not at one time the distinguished Senator from Indiana (Mr. BAYH) espouse an entirely different version? Did he not at one time espouse the automatic plan, as opposed to the direct election plan?

Mr. ERVIN. I am not sure.

Mr. ALLEN. The hearings before the Committee on the Judiciary indicate that.

I should like to ask the distinguished Senator a further question: If the Senate and the House should submit this amendment to the States for ratification, would it not take the affirmative vote of 38 States?

Mr. ERVIN. Thirty-eight States, having anywhere from 75 to 76 separate and independent legislative bodies.

Mr. ALLEN. Is it not a fact, also, that if the amendment were before the States for ratification, that would effectually prevent Congress from submitting a different plan if later on, as the 1976 election approached, the consensus in the two Houses was that a different plan would be better? Would that not, in effect, stop for 7 years any meaningful reform?

Mr. ERVIN. Yes; as the Persian poet said:

> The Moving Finger writes; and, having writ,
> Moves on: nor all your Piety nor Wit
> Shall lure it back to cancel half a Line,
> Nor all your Tears wash out a Word of it.

Mr. ALLEN. I thank the distinguished Senator for this information.

Mr. BAYH. Mr. President, I have listened with a great deal of interest to my two friends, the Senator from North Carolina and the Senator from Alabama. I do not want my following remarks to be considered at all disparaging toward them, nor to impugn their thoughts, because I know that their motives are, to use one of the favorite expressions of the Senator from North Carolina, "as pure and clean as the new fallen snow."

But, Mr. President, I think it is rather inconsistent for a Member of this body to suggest that this matter needs to be discussed fully and completely and that the Constitution should not be amended unless we have had adequate discussion and that we have not had adequate discussion, and then, in the same breath or in a preceding breath, to say, "Well, I don't want to discuss this any further at this time."

Now just a minute—just a minute. This matter was introduced into this body in January of last year, 1969—almost 2 years ago. This matter was the subject of the same type of tactic in the Judiciary Committee from September to February of this year. It took from February to April before we could finally get a vote. Then it took 11 more weeks to get a report written by those opposed to it. I think that the record will certainly show——

Mr. ALLEN. Mr. President, will the Senator from Indiana yield for a question?

Mr. BAYH. I yield.

Mr. ALLEN. I should like to ask the Senator from Indiana, if he should stop monopolizing the floor, would it not be incumbent upon someone to come forward and speak, or the Griffin-Tydings amendment would be put to a vote.

Mr. BAYH. I think the assessment of the Senator from Alabama is accurate. I must say, I take issue with the use of the word "monopolizing." I think the RECORD will show that on most of the days between the present date and the day after the Labor Day recess, there has been ample opportunity for others to be heard. I have said repeatedly that I think the proponents of this matter have had ample opportunity to make their case, and that they have done so pretty well. But someone has to stand on the floor of this Senate and tell the Senate and the country what is going on, and what is about to go on in the next 5 minutes. After the Senator from Indiana sits down, the Senator from West Virginia (Mr. BYRD) is going to propose a unanimous-consent request that we put aside

this matter and go on to some other business.

Mr. ALLEN. Could not the Senator from Indiana object then?

Mr. BAYH. The Senator from Indiana has no desire to object because he thinks there has been ample discussion. I am willing to go directly to a vote.

Mr. President, I ask unanimous consent that at 1 p.m. on tomorrow, we vote on final passage of Senate Joint Resolution 1.

Mr. ERVIN. Mr. President, I object.

The PRESIDING OFFICER (Mr. CRANSTON). Objection is heard.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, and I do not intend to object, but would not the Senator have to waive rule XII?

Mr. BAYH. Mr. President, I ask unanimous consent to waive rule XII and that the Senate go on to consideration, on tomorrow, of Senate Joint Resolution 1.

Mr. ERVIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ALLEN. Mr. President, reserving the right to object, the Senator from West Virginia would have to lay aside the Griffin-Tydings amendment because that is the actual pending business before the Senate, is it not?

Mr. BAYH. The Senator tried to get a vote on that amendment, and on 13 other matters, and found that he was unable to do so.

I think the record is absolutely clear that this is not an effort to explore the faults and shortcomings of Senate Joint Resolution 1. In the next 5 minutes the Senator from Alabama, the Senator from North Carolina, and any other Member of the Senate can have all afternoon, all night, and all day tomorrow to tell us what is wrong with Senate Resolution 1.

Mr. President, I yield the floor.

ELECTORAL REFORM—ITS TIME HAS COME

Mr. MONTOYA. Mr. President, a nation is only as strong and viable as its basic institutions. This is particularly the case in a republic resting upon democratic principles. Only the will of its people and their collective belief in their government and institutions maintain the stability of such a society. Upon such bedrock has our Nation rested.

In our country, the Constitution has been both shaper and preserver of these institutions. Its flexibility has allowed us to restructure those institutions in order to reflect the evolution of our Nation and changing needs of its people. Only in this manner have we survived and grown. Constitutional amendments have been vehicles for constructive change. Such constitutional evolution is what is demanded today if the will of our people is to be adhered to rather than thwarted.

Our formal electoral process has a kink in it at the very end in the form of our electoral college. Long ago the need for reform of this portion of our system was proven. A call was then sounded for abolition of the electoral college. Again the summons echoes in this Chamber and across the land. Its replacement would be direct election of the President and Vice President by the people themselves—which is as it should really be. To delay reform or dilute its pure form in this case would be denying the overwhelming will of the people, vigorously expressed. Pollster George Gallup found 81 percent of those responding favorable to direct election. The Lou Harris poll counted 78 percent in favor of such a reform move.

I heartily agree with the distinguished majority leader's conclusion that:

> The presidency has evolved, out of necessity, into the principal political office . . . for safeguarding the interests of all the people in all the States. And since such is the case . . . the presidency should be subject to the direct and equal control of all the people.

Opponents of this proposal we have under consideration take a position defending the electoral college as an integral part of a Federal system that would collapse if we changed any single part of it. They envision such contemplated reform as a radical, self-destructive effort. This is in error.

The original compromise has never worked, whereby the electoral college was brought into being. It has not effectively balanced off large and small States. The electoral college has long ago become subservient to the changing will of our major political parties. In fact, rather than being a group of the best minds of our country, it has degenerated into a sinecure given out as a political sop. This appendage has withered before our eyes to the point where it is a liability to the concept of democratic institutions. It is dangerous in that it is not responsive to the direct will of our people. As such, it can go in any direction without constitutional control or national sanction. Herein lies potential danger and even destruction for the Nation, as the last national election amply proved. Many a coast-to-coast shudder went through the national frame in the face of several alternatives we all too well remember.

America and her form of democracy have evolved. All this reform seeks to do is institutionalize it. Popular vote is the clearest voice our people can speak with. Yet it is still possible, as of this moment, to elect a man as President who would not command the popular mandate of the American people. This is, in truth, the very negation of democracy, rather than its affirmation. By passing this reform, we would robustly reaffirm the concepts our Nation was founded on and in the name of.

We must look ahead to future crises. The mists of a distant future are not totally impenetrable. There will be other third parties brought into being by basic dissatisfaction of significant elements among the electorate. There will be other instances of no single candidate gaining a clear mandate. There will be further threats of wholesale political manipulation. There may very well be more than one unfaithful elector whose behavior could be accepted rather than challenged. Where, therefore, would a future generation stand in such an instance? Would we be faithful to our charge if we stood aside today and refused to discharge our clear responsibility?

We dare not abrogate our duty and abandon America to the vagaries of the future in the name of preserving a fossil. Reality dictates reform now. Vision cries out for statesmanship now. Our only real choice is to give power back to the people, from whom it springs and to whom it truly belongs. We can do no less, immediately.

Our Federal principle enshrines the will of the people, finding its supreme expression in free choice of their own leaders. To deny them the fullest form of such a supreme right is to make a mockery of all principles this Republic was founded and rests upon. It calls into question the validity and meaning of our system of government in the eyes of an increasingly aware, questioning electorate.

The Constitution was created in less than 100 working days. Can we not, in this time of a national demand for a responsive legislative branch, come forth with one simple reform that is so clear to all eyes? The Nation looks to this Chamber at this moment, as in other moments of drama and crisis, for leadership—for decision—for simple decisiveness.

Now is not any time for obfuscation. Now is no time for waving a tattered flag of tradition. Now is no time for delay, weak excuses, or feeble flappings over precedents. This is an hour for setting precedents—for letting in a few fresh breezes into America's rooms—for giving the people a sign that their Government is responsive.

Nor is this a time for half measures. We are either going to abolish the Electoral College and politically emasculate tomorrow's demagogs, or we shall continue to trip gaily along the brink of an abyss. A meaningful, succinct, and comprehensive amendment has been offered. It is before us now. The American people are with us. Delay is inexcusable. Let us act.

STATUS OF THE UNFINISHED BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside and that it remain in that status until the conclusion of morning business on tomorrow, and that the Senate proceed to the consideration of Calendar No. 1214, S. 4358, and that, when S. 4358 is stated by the clerk, the able senior Senator from West Virginia (Mr. RANDOLPH) then be recognized.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from West Virginia?

Mr. ALLEN. Mr. President, reserving the right to object, the junior Senator from Alabama has come to the Senate Chamber each day while Senate Joint Resolution 1 has been the unfinished business. He has seen the distinguished Senator from Indiana come in and, as the sponsor of the resolution, gain the floor. He has discussed this matter at length and has challenged the opponents of the measure to come forward and present their opposition to the resolution

and then, after having talked for an hour or an hour and a half, the business has been laid aside, enabling him to come back the next day and charge opponents of the measure with not coming forward and speaking against the resolution.

So, Mr. President, in order to see whether there is any discussion that needs to be had, that should be had, or that Senators desire to make, with respect to the pending joint resolution, at this time the junior Senator from Alabama is going to interpose an objection to the request that the business be laid aside.

The PRESIDING OFFICER. The objection is heard.

The Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, shortly, the Senate will recess to participate in a joint meeting with the House. It was the hope of the leadership that we might be able to set aside the unfinished business until the conclusion of morning business on tomorrow and allow the senior Senator from West Virginia (Mr. RANDOLPH), who is the chairman of the Public Works Committee, to make a statement on the pending Clean Air Act before the Senate recesses to meet with the House. I would hope that the able Senator from Alabama would not repeat his objection if I seek to renew my unanimous-consent request.

Mr. ALLEN. Mr. President, reserving the right to object, and in view of the request that the Senator from Alabama regards as a personal request, but with the assurance to the distinguished Senator from Indiana that there are many who oppose this resolution and who are willing, ready, and able to speak on the resolution, the junior Senator from Alabama will withdraw his objection.

The PRESIDING OFFICER. The objection is withdrawn.

Mr. BAYH. Mr. President, reserving the right to object, although I have no intention of objecting, the Senator from Indiana is not going to allow the assertion that he has monopolized the floor and prohibited the opponents of Senate Joint Resolution 1 from having adequate opportunity to discuss the matter remain unchallenged in the RECORD.

The Senator from Indiana wants to be as tolerant, as understanding, as congenial, and as cooperative as he possibly can with his colleagues. For these reasons, on each previous morning when a unanimous-consent request was made, he has suggested that the proponents of electoral reform had made their case and it was incumbent upon those who disagreed to express their opposition, as they have a right to do. At no time has there been a single soul willing to stand up and say, "I want to be heard. This is why I do not want electoral reform and that is why I do not want electoral reform." No one has said that they want to be heard.

Today we do not find anything different than we found the last 10 days.

Mr. President, I do not object.

Mr. BYRD of West Virginia. Mr. President, I wish to express my gratitude both to the Senator from Indiana and the Senator from Alabama for their cooperation. The leadership wants to state at this point that it has enjoyed the cooperation of both sides on this matter over the several days that the resolution has been before the Senate. This has enabled the Senate to proceed with other business. I want to express my personal thanks to each Senator.

The PRESIDING OFFICER. The Chair would advise the Senator from West Virginia that he must reoffer his unanimous-consent request.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside and that it remain in that status until the conclusion of morning business on tomorrow, and that the Senate proceed to the immediate consideration of Calendar No. 1214, S. 4358, and that the able Senator from West Virginia (Mr. RANDOLPH) then be recognized immediately after the S. 4358 is laid before the Senate.

Mr. BAKER. Mr. President, reserving the right to object, do I correctly understand the request of the distinguished Senator from West Virginia to be that we may fully proceed with the Clean Air Act then?

Mr. BYRD of West Virginia. Yes.

Mr. BAKER. And we are not limited just to the speech by the Senator from West Virginia (Mr. RANDOLPH)?

Mr. BYRD of West Virginia. No. The unfinished business would not again come before the Senate until the conclusion of morning business on tomorrow.

Mr. BAKER. I thank the Senator from West Virginia.

The PRESIDING OFFICER (Mr. CRANSTON). Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

NATIONAL AIR QUALITY ACT OF 1970

The PRESIDING OFFICER (Mr. CRANSTON). Without objection, the Chair lays before the Senate, Calendar Order No. 1214, S. 4358, which the clerk will state.

The assistant legislative clerk read as follows:

S. 4358, a bill to amend the Clean Air Act and for other purposes.

The Senate resumed the consideration of the bill.

Mr. RANDOLPH. Mr. President, I ask the distinguished Presiding Officer of this body to advise the Senator from West Virginia and his colleagues who sit with him the approximate time that Members of this body will join the Members of the House of Representatives in connection with the joint meeting.

The PRESIDING OFFICER (Mr. CRANSTON). That will depend on the request that will be made by the leadership.

The Chair recognizes the Senator from Montana.

ORDER FOR RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. MANSFIELD. Mr. President, I ask that, at the appropriate time, after a quorum call has been requested, the Senate stand in recess subject to the call of the Chair at the conclusion of the joint meeting between the two Houses in the other Chamber.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ORDER FOR RECOGNITION OF SENATOR RANDOLPH

Mr. RANDOLPH. Mr. President, the membership will return to the Senate Chamber following the joint meeting. Shall I continue to have the privilege of the floor at that time?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from West Virginia (Mr. RANDOLPH) have the floor when the Senate reconvenes following the recess.

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

Mr. RANDOLPH. Mr. President, in view of the quorum call which is anticipated, I would desire then, I say to the distinguished majority leader, to make my remarks when we return from the joint meeting.

Mr. McCLELLAN. Mr. President, will insertions in the RECORD be in order when we return from the joint meeting?

Mr. MANSFIELD. Not until the time under the Pastore germaneness rule expires.

Mr. McCLELLAN. When would that be?

Mr. MANSFIELD. It should be roughly about that time.

Mr. McCLELLAN. Mr. President, I thank the Senator.

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY COL. FRANK BORMAN, A SPECIAL REPRESENTATIVE OF THE PRESIDENT, ON PRISONERS OF WAR

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the call not exceed beyond 12:13 p.m., at which time, I ask unanimous consent, the Senate stand in recess until the conclusion of the joint meeting in behalf of the U.S. prisoners of war. I would urge every Senator to attend that joint meeting today because it is of great importance.

The PRESIDING OFFICER. Without objection, it is so ordered. 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. Under the previous order, the Senate stands in recess subject to the call of the Chair.

Thereupon, at 12:13 p.m., the Senate, preceded by the Deputy Sergeant at Arms, Mr. William H. Wannall, and the Chief Clerk of the Senate, Mr. Darrell St. Claire, proceeded to the Hall of the House of Representatives to hear the address by Col. Frank Borman.

(The address delivered by Colonel Borman appears in the proceedings of the

House of Representatives in today's RECORD.)

At 1:08 p.m., on the expiration of the recess, the Senate, having returned to its Chamber, reassembled and was called to order by the Presiding Officer (Mr. MANSFIELD).

NATIONAL AIR QUALITY STANDARDS ACT OF 1970

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I shall propound a unanimous-consent request, with the proviso that it be without prejudice to the senior Senator from West Virginia (Mr. RANDOLPH) who is to be recognized under the previous order.

I ask unanimous consent that during further consideration of the pending bill, Calendar No. 1214, S. 4358, the Clean Air Act, debate on any amendment be limited to 1 hour, with the time to be equally divided between the sponsor of the amendment and the manager of the bill; that time on any amendments to amendments, and motions, and appeals, except for motions to lay on the table be limited to 30 minutes, the time to be controlled by the mover of the amendment to the amendment and the manager of the bill; that the time on the bill be limited to 4 hours with the time to be equally divided and controlled between the manager of the bill and the minority leader or his designee; that no amendments not germane to the provisions of the bill be in order; and that time under the bill may be allotted by those in control thereof to any Senator on any amendment, motion, or appeal.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, reserving the right to object, I am among those who find some aspects of the bill very controversial.

I want to indicate that I was disturbed originally because it was suggested that only 2 hours of debate be granted on the bill. At my request, the distinguished majority leader and the distinguished acting majority leader have extended that period to 4 hours which will provide additional time in the event the 1 hour and the half hour allotted to a particular amendment might not be sufficient in any particular situation.

This is a very, very important piece of legislation. It is going to have a far-reaching impact on the whole economy, to say nothing of the automobile industry. Yet, I realize that there is only so much time that can profitably be devoted in the Senate in terms of having someone listen to those who want to speak.

I feel that this will be satisfactory and that we can move along and deal with the issues that need to be dealt with.

Mr. President, I do not object.

Mr. GURNEY. Mr. President, reserving the right to object, I want to make an inquiry about the unanimous-consent request.

I intend to offer an amendment to the Dole amendment, a perfecting amendment. With regard to the time provision in that amendment, as I understand it, under the unanimous-consent request, mine would be an amendment to an amendment. I could offer that at any time after the Dole amendment is offered, and I would have a half hour on that amendment.

Mr. GRIFFIN. Mr. President, it is a half hour on the amendment.

Mr. GURNEY. The Senator is correct.

Mr. COOPER. Mr. President, I have no objection to the agreement. However, representing the minority side, I would like to ask if the Senator from Maine (Mr. MUSKIE) has been consulted and if the chairman of the committee, the Senator from West Virginia (Mr. RANDOLPH), has been consulted.

Mr. BYRD of West Virginia. Mr. President, in response to the question of the able Senator from Kentucky, may I say that the Senator from Maine (Mr. MUSKIE) on yesterday afternoon was agreeable to entering into such an agreement. He thought that we were on the verge of having such an agreement. However, at that time there was some objection from the other side. I am confident that there will be no objection from the Senator from Maine, because on yesterday he had thought we were about to reach such an agreement, and he had worked for it.

Mr. COOPER. Mr. President, the Senator from West Virginia was out of the city, I think.

Mr. BYRD of West Virginia. Mr. President, I do not think there would be any objection on his part. I believe I can confidently state that, Mr. President.

Mr. SPONG. Mr. President, was the consultation of the Senator from West Virginia (Mr. BYRD) with the Senator from Maine (Mr. MUSKIE) about the possible time limitation prior to or after the remarks of the Senator from Nebraska (Mr. HRUSKA) on yesterday?

Mr. BYRD of West Virginia. Mr. President, I think I can answer the Senator. My consultation with the Senator from Maine on yesterday occurred following any remarks by the Senator from Nebraska (Mr. HRUSKA).

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, further reserving the right to object, I am thinking now in terms of the fact that we have a policy luncheon and have some matters on the agenda which will require my attention. When will the time begin to run?

Mr. MANSFIELD. I might say that an amendment is pending now. I do not think there will be much difficulty on that amendment, however.

Mr. GRIFFIN. In the meantime, the time will be taken out of the 1 hour allotted to the pending amendment, which will be satisfactory. It would not take away from the time on the bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Chair will see to it that nothing is done before the Republican conference and the Democratic Policy Committee have completed their discussions and until some speakers are on the floor. The time will not begin to run until the distinguished Senator from West Virginia has completed his remarks.

Mr. MANSFIELD. Mr. President, by necessity, the distinguished senior Senator from Washington (Mr. MAGNUSON) could not be present during the consideration of the Clean Air Act amendments. The Senate will not be without his thoughts and views on this measure, however, Senator MAGNUSON has prepared a statement on this antipollution bill and in it he offers his strong support, and recounts for the Senate some of his own achievements and those of the committee he chairs—the Committee on Commerce—in this most important area.

I ask unanimous consent that Senator MAGNUSON'S statement be printed at this point in the RECORD.

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

STATEMENT OF SENATOR MAGNUSON

Mr. President, the Senator from Maine (Mr. Muskie) and his colleagues on the Public Works Committee are to be congratulated for the firm, responsible legislative steps they have taken in S. 4358 to bring automobile air pollution under control. By legislatively mandating the production of low-emission vehicles, Senator Muskie and his colleagues have demonstrated resolve to bring about the production of low-emission vehicles which would significantly reduce air pollution in this country.

Low-emission vehicle development has been a matter of continuing concern to the Senate and the Public Works Committee and Commerce Committee. In 1967 joint hearings were held to explore electric car technology. Those initial hearings were followed in May 1968 by joint hearings to explore steam car technology. On the basis of these hearings and other investigations, the Senate Commerce Committee published a report entitled "The Search for a Low-emission Vehicle" which concluded that the existing legislative approach to vehicular air pollution was inadequate, that other technologies for vehicle propulsion were feasible, and that a new low-emission vehicle had to be produced if we were going to stop the air pollution epidemic.

In January of this year the Senate Commerce Committee and the Public Works Committee again jointly searched for low-emission vehicles in hearings on S. 3072, the Federal Low-Emission Vehicle Procurement bill—a bill which was unanimously approved by this body on March 26th of this year and which now awaits action in the House. This procurement legislation is an essential first step toward realizing the goal of low-emission vehicles by 1975. By offering a guaranteed government market to both innovative producers and the automobile industry itself, the legislation can stimulate early development and production of smogless cars. The premium paid by the government for these cars can help defray costs resulting from necessary acceleration of present research, development and production programs. The procurement legislation also offers vehicle manufacturers the opportunity to fleet test under controlled conditions their low-emission vehicles to insure satisfactory consumer performance when full production is undertaken.

In addition to the joint efforts of the Senate Commerce Committee and the Senate Public Works Committee in the area of automobile air pollution control, both Committees have cooperated in developing legislative provisions authorizing the setting of air pollution standards for other transportation modes, including aircraft and vessels. In March the Commerce Committee participated

in joint hearings on the legislative proposals from which the reported air pollution bill was derived. I am happy to say that the Public Works Committee accepted several suggestions which our Committee made concerning the proper involvement of the Federal Aviation Administration and the Coast Guard when setting standards and conducting compliance tests on aircraft and vessels, matters within the jurisdiction of the Senate Commerce Committee.

Ordinarily the Senate Commerce Committee would request re-referral of a piece of legislation which so profoundly affects transportation matters. But because of the joint efforts already undertaken, because of the lateness of the session, and because of the compelling need to take positive action on this legislation now, no such request will be made.

I support S. 4358 and urge its swift enactment.

Thank you Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia (Mr. RANDOLPH) is recognized.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time under the agreement not begin to run against the Senator from West Virginia (Mr. RANDOLPH) until such time as he has consumed, if he does so consume, 30 minutes.

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

Mr. RANDOLPH. Mr. President, our attention to this legislation is of the utmost importance. I am sure that my able colleague on the committee, the junior Senator from Tennessee (Mr. BAKER), would feel it appropriate for me to reemphasize, although perhaps not in his exact words, what he said within the committee at the time we were working on the measure. He indicated on that occasion that the National Air Quality Standards Act of 1970, could well be the most significant domestic measure that would be presented during the 91st Congress.

I echo that expression. I have stated that the matter is of extreme importance to many segments of American life including, of course, all the people of the United States.

In this legislation it is proposed that we establish a national policy for the protection of the health of the citizens of our Republic. I think it should be very clearly understood that this is not the beginning. As we come today, and as we began yesterday, the consideration of this legistion we were building on the legislative framework of the Clean Air Act of 1965 and the 1967 Air Quality Act amendments.

So I think it is pertinent to say that within the Committee on Public Works, and especially within the Subcommittee on Air and Water Pollution, we have been giving attention to these matters, responsible to our colleagues in the Senate, a Senate that I think is responsive to the American people, although we are not always in agreement on the procedures that are proposed in this measure.

The pending bill would require the establishment within 3 to 5 years of its enactment State implementation plans to achieve national ambient air standards to protect the health of citizens of this country.

I undescore that this objective may be very difficult to achieve in this time bracket. It is my belief that an extension of this proposed schedule will probably be required in certain instances.

However, I feel that if we can achieve the objectives in the hoped-for time period we would control and abate today's air pollution and also prevent in part the occurrence of future air pollution problems, and we would do so reasonably and realistically without doing violence to legitimate and necessary business. In the process, both industry and Government will be hard pressed to provide the required capital and manpower for what I know will be a mammoth, but necessary, undertaking.

This legislation will test the willingness of the citizens of this Nation to control and abate environmental pollution. Ultimately every individual citizen would be called on to pay the increased costs associated with the achievement of an environment that protects and improves the public health within this country.

I think it is necessary also to stress the fact that effective implementation in 3 years would require a major commitment by Government and industry. The pending bill contains authorizations of $1.190 billion. This is the commitment of the Federal Government, a commitment, of course, that must be followed within the appropriation process. I have said on many occasions that often we authorize from the standing committees programs for which we have extreme difficulty in providing the necessary funds with which to do the job. It is going to be necessary, if this task is to be completed, that we have the funds to do the work. That is why I call the attention of my colleagues again not only to the authorization activity which results in the measure before us, but also to the responsibility which this body will have to appropriate the required funds.

Equally important will be the commitment of those units of government at the State and local level, and certainly the private sector of our economy. Sometimes we are not as eager as we should be to commend business and industry when, by and large, with exceptions—and this is understandable—business and industry attempt with Congress to move forward in these matters, making their own viewpoints known. Sometimes, very candidly, the differences that exist are, in reality, our strengths. We do not have to be uniform in the presentation of a bill to have a unity on the measure because certainly the detail provisions must be subject to very close scrutiny. But it is the purpose of this legislation, which I hope the Senate will approve, as well as the actual words of the act as presented.

I earlier mentioned that we have a framework of action. It is a framework which began with Clean Air Act of 1965 and the Air Quality Control Act of 1967. Frankly, there has been the necessity to change that program and there will be the necessity in the months and years ahead to refine the pending measure.

The National Air Quality Standards Act of 1970, I believe, will accelerate the effort to provide clean air through additional policies and procedures for action. It is important that we act and that we do so not just in a desire to act but to do it with knowledge and intelligence. I hope we are doing that in this legislation.

Progress in implementing the policies in this legislation will receive continuous review by the Committee on Public Works over the 3-year authorization period. Where necessary, further congressional action will be provided. During this time all affected parties will have an opportunity to present their views. Under review by the committee will be the commitment of both industry and Government to air quality.

I want to state again with emphasis that I would rather have us feel that this is not a matter of Government as a senior partner and industry as a junior partner. I would like to think of this as a partnership, a full partnership, a partnership of understanding, a partnership of concern, a partnership of action in reference to what we are doing in this legislation.

I call attention to the fact that in the past the Federal staffing and funding have left much room for improvement, as has the commitment of funds and personnel and staff at each level of Government.

In 1967, it was estimated that the staff of the National Air Pollution Control Administration would have to increase to 1,900 in fiscal 1970 if the Air Quality Act of 1967 were to be implemented in its full potential. Yet, as of May 1, 1970, NAPCA had only 971 full time permanent workers on its staff as compared with provision for 1,116 in its 1968 budget. This inadequacy has been the chief deterrent to progress in the NAPCA effort to abate air pollution. If implementation of the act of 1970 is to be achieved, the administration—and I am not critical of the administration when I make this statement—must fund and staff the National Air Pollution Control Administration at the required level.

We must have the development of new and improved emission control systems for both stationary and moving sources. Funds were provided in the Air Quality Act of 1967 to stimulate development of the required technology. This research and development effort has been severely underfunded in the intervening years, a situation that must be remedied.

I call upon the Members of the Senate and the House, I call upon all the people of the country who are concerned with this problem, to see that this situation is remedied in the months ahead. For example, we placed in the 1967 act authorization for a 5-year research and development program for the control of sulfur oxide emissions from stationary sources. This program called for a Federal expenditure of $394 million, including $215 million for the period from 1968 through 1970. Yet, in this 3-year period the estimated actual expenditure has been only $82 million, or $123 million behind schedule. The estimated expenditure for fiscal 1971 was $94 million, as compared to the currently planned expenditure of $26 million.

I reviewed this research effort in some detail in my Senate remarks on S. 4092 and the current fuels and energy crisis on July 16, 1970, and in testimony on the bill before the Interior Committee on September 2, 1970.

This was in connection with my remarks when I introduced a bill, with the cosponsorship of more than 60 of my colleagues, to establish a Fuels and Energy Commisison in this country, keeping in mind environmental factors. That was on September 2, before a subcommittee of the Committee on Interior and Insular Affairs, in which this situation, which certainly is a crisis, was stressed.

The remedies to air pollution, however, must not rely solely on add-on devices. Insufficient attention has been given to such other alternatives as fuel cleaning, more efficient methods for combusting fuels, and the development of synthetic fuels with low potential for environmental impact.

The committee, therefore, has expanded the research and development authority under section 104 of the Air Quality Act. The development of control methods, process changes, and improved operating procedures all offer potential remedies to reduce atmospheric emissions. These alternatives can be funded and developed under that act. The private sector can actively participate as well as support its own development efforts. In concert between the Federal Government and industry there can be accelerated development of new and improved means to reduce atmospheric emissions.

The legislation being debated today reflects an evolutionary developmental effort by providing for the establishment of performance standards for new stationary sources. This provision would require the application of the most effective means of preventing and controlling air pollution for new stationary sources.

The overriding purpose of performance standards for new stationary sources is to prevent the occurrence of new air pollution problems. These standards will insure that when an industry moves into any area with low pollution levels, that this new facility does not appreciably degrade the existing air quality. The first plant in a new area must meet the same standards of performance as subsequent plants, thus spreading the responsibility equally among all facilities for maintaining clean air.

This legislation also provides for emission standards for hazardous materials. Concern is for material which in trace quantities in the ambient air contribute to a high risk of serious irreversible or incapacitating effects on health. It is anticipated that this provision will be employed to control only those materials which are extremely hazardous or toxic to people. It is anticipated that a limited number of pollutants come within this category.

It may be desirable to provide a total prohibition of emissions for these contaminants, but it is recognized that emissions may be possible without endangering public health. The committee intended that the burden of providing that emissions are possible without endangering the health of persons should rest with the emitter.

An administrative procedure, Mr. President, as I conclude my remarks, is provided for those industries that discharge hazardous materials to present scientific and medical evidence that the public health is not in danger when low level discharge of these materials is permitted. It is intended that the Secretary, in establishing the emission standards for these materials, would give recognition to the fact that trace materials may occur as impurities in many types of combustion. In this regard, section 115 would apply to primary producers of hazardous materials rather than to general combustion processes in which these materials appear as pervasive but in almost immeasurably small quantities.

Mr. President, as I indicated in my first few words, this is a significant approach to a very pressing problem. I think that in the 91st Congress, we cannot overstate the gravity of the situation, and the compelling need to enact such legislation. I think it is without question one of the most far-reaching environmental protection measures to be considered, perhaps not only in this Congress, but over a considerable period of years. It is also one which will have broad economic impact. I recognize this, and I am concerned to a great degree, as I have stated within the subcommittee, within the committee, and again on the Senate floor. I must remind Americans that there will be price tags on the costs which they will pay for goods and services.

And so, as we desire, and properly so, to enhance the quality of our environment, to provide cleaner air, that Americans may live in greater health, we know that what we are doing will be felt, not so much today or tomorrow, but it will be felt by those generations that will be active in the United States of America 10, 15, or 20 years from now.

For the reasons that I have stated, Mr. President—and, of course, there are other reasons which members of our committee, and especially our subcommittee, have presented and will present—I urge the enactment of S. 4358.

If this bill is passed, and if this bill or a revised measure goes to the President of the United States and is signed into law, I feel that we can proceed with an accelerated effort to improve the air which is breathed by the increasing population of men, women, and children of this country—some 209 million persons living in this Nation today. What the figures will be in a few years we do not know, except that we have every indication that our population will increase, and the people in this country will desire, in large numbers, to continue to live in the urban and the closely clustered suburban areas of our country. So this is a real problem, a problem that concerns all of us, not just industry and business and Government, but the people of the United States as a whole; and I hope that we here today, and subsequently on the amendments that shall be voted, will make a further commitment to do this job and to do it, Mr. President, while we still have time.

Mr. GURNEY. Mr. President, I support S. 4358, the National Air Quality Standards Act of 1970, which was reported by our Committee on Public Works on September 19, 1970, by a unanimous vote of its members.

I have been privileged to serve on the Committee on Public Works and I wish to take this occasion to pay particular tribute to the leadership of our chairman, the distinguished senior Senator from West Virginia (Mr. RANDOLPH), and to the leadership of the ranking minority member, the distinguished Senator from Kentucky (Mr. COOPER) and also that of chairman of the Subcommittee on Pollution, the distinguished Senator from Maine (Mr. MUSKIE) and the ranking member on that subcommittee, the distinguished Senator from Delaware (Mr. BOGGS). They all are to be commended upon their work on this bill.

Mr. President, the need for improving the quality of the air nationwide has been apparent for some time, but I think it was brought home to us all at the end of last July and in the first week of August when almost the entire east coast of the United States was smothered in a choking smog. As we looked at our great cities through watery eyes the realization came, I think, with great urgency that the Congress must act decisively about this incredible state of affairs. The quest for solutions to our national problems of air pollution which a decade ago had been the regard of merely a handful of scientists and forward-looking conservationists has become an issue of a national overwhelming concern.

As President Nixon said in his February message on the environment:

> The time has come when we can wait no longer to repair the damage already done and to establish new criteria to guide us in the future.

Autos and trucks, generally agreed to be the biggest single source of pollutants in the air, came in for a great deal of criticism last August. Fifteen States filed suits in the Supreme Court in an attempt to force automakers to produce pollution-free cars at the earliest possible date.

We have had our share of the prophets of doom and gloom who have told us again and yet again that the battle has been lost before it has been joined and that our planet is inexorably succumbing to the poison of its own chemical and natural waste products.

I do not share, nor can I ever share, such pessimism. It seems to me that the genius of the American spirit which produced so much for so many can, if properly channeled and directed, be turned to the problem of successfully cleaning up our environment. It is axiomatic that this battle will be a costly one and I think it deserves the highest priority in our national councils. If the fight against polluted air, filthy water, and solid waste is to be won, we must have a united attack upon it by all levels of Government: Federal, local, and State, by

industry, and by individuals throughout the Nation. I think the prospects of mounting such a victorious offensive are real and substantial. I think we are on the way. I think that this bill, S. 4358, the National Air Quality Standards Act of 1970, which has been presented to the Senate by the distinguished chairman of the Public Works Committee, is a significant contribution to that fight.

The National Air Pollution Control Administration tells us that five chemical contaminants are the most offensive and dangerous factors in air pollution today. The most pervasive of these is carbon monoxide, of which we have 100 million tons per year coming largely from autos, trucks, and buses. It has been stated by the National Institutes of Health that even in small amounts, carbon monoxide diminishes the reflexes of individuals and impairs their judgment.

Sulfur dioxide, of which 33 million tons are dumped into the air annually, is an irritating gas which comes mostly from burning of oil and coal and it adversely affects the individual's lungs and his throat. If he has any respiratory difficulty at all, be it minor such as a cold, or major such as emphysema, sulfur oxide aggravates that ailment.

Particulates, of which 28 million tons find their way into the air in the United States annually, are tiny bits of solid matter, some of which are extremely dangerous to the respiratory system. Again, they come mainly from the burning of coal and from smokestacks which are not properly filtered.

Hydrocarbons, of which half of the 32-million-ton total is each year discharged from trucks and autos, are reputed to be a key ingredient in the smog that surrounds so many of our cities these days.

Nitrogen oxides, of which 20 million tons yearly find their way into our air stream, is another smog-inducing element, which daily pours out of motor vehicle tailpipes and also from combustion of fuel, coal, oil, and so forth, at stationary sources.

Tallied up, the public health officials estimate that 91 million tons of toxic material annually go into our atmosphere as a result of the internal combustion engines in automobiles, trucks, and buses. Our bill is aimed specifically at reduction of the toxic substances poured into the air by automobiles and by stationary users of fuels in our hope that we can significantly lower the level of air contamination in future years. We cannot, obviously, outlaw the internal combustion engine; we cannot forbid the burning of coal or oil. The problem, as I see it, is one of balancing: How we can develop standards and procedures and controls which will reduce significantly the present level of air contamination, while at the same time not causing a severe economic dislocation. It is not sufficient at this time to point an accusatory finger at industry, or at the consuming public, or at the utilities, or at the car manufacturers, or at any group within our society and try to make them the villain of this tableau. There is no villain. There is only a problem which needs to be remedied. Our bill in my judgment is a rational and viable approach to this problem.

In many ways the bill presently under consideration is a trail-blazer on the part of Congress. We have spelled out and specifically written into this act the emission standards to be imposed on sources of pollution, and when we did that, we did it with the realization that we were entering unknown and unexplored territory. I think the situation in our country demands this kind of action. But, like a surgeon's most powerful drug, such a drug is fraught with danger unless expertly administered and unless the patient is safeguarded against its deleterious side-effects. And so, while I support wholeheartedly the intent of our committee in this piece of legislation, I would offer several caveats which I think must be recognized from the outset.

I am troubled by two portions of the bill: First, the establishment within the bill of emission standards for motor vehicles to be established and made operational by January 1, 1975, and second, by the provision which relates to judicial review of the Secretary of Health, Education, and Welfare's determination in this regard. On the question of setting standards by 1975, our committee has been informed by the entire automobile industry that the technology to effect the desired result will not be available for wholesale use on millions of motor vehicles by 1975. I do not know if this contention on the part of the automobile industry is, in fact, correct, and as I pointed out in my individual views which were submitted with the report, no one knows whether this contention is correct, since hearings were not held on this specific subject. As I stated in my individual views, I think that mandating standards set out in this bill for a January 1, 1975, achievement is open to the criticism that it is arbitrary. Nevertheless, I think that the January 1971, deadline can be left in the bill provided we also include some sensible way to prevent economic dislocation should the technology not be available on that date. The inclusion of the deadline is a goal for automakers to speed such technological development. Hopefully they will achieve it. If they do not, I would suggest that the manufacturer or manufacturers be allowed to apply for two extensions of 1 year each in order to make such performance and emission standards a reality. The bill as it now stands provides for a 1-year extension subject to judicial review in the U.S. Court of Appeals for the District of Columbia circuit. My suggestion would be that the Secretary of Health, Education, and Welfare should be empowered to make such an extension or extensions on the facts presented to him, and that a determination on his part either to grant or withhold such a suspension should not be subject to judicial review.

I say this not because of any resentment or dislike for the process of judicial review. On the contrary, I think judicial review is eminently suitable in most instances. I think, however, that this is an extraordinary case and that the process of judicial review would not serve the best interests of the general public. I think that it would be potentially time consuming and might very well delay, instead of hasten, the implementation date of emission standards which we all want to see. We have reposed great authority and responsibility in our bill in the Secretary of Health, Education, and Welfare. It is he who is responsible for the promulgation of air quality standards and their supervision and enforcement.

In the final analysis, in my judgment, it should be the Secretary who should have the authority to make the determination about whether a suspension of the January 1, 1975, deadline is desirable and/or necessary. The Secretary has experts at his disposal within the Department of Health, Education, and Welfare; he has developed a wealth of technical knowledge within the Department on this subject. His engineers have been working closely with the auto industry for some time now on solving the air pollution problem. There is no one in or out of Government better able to make a sound judgment on whether or not the auto manufacturers can meet the January 1, 1975, deadline. If evidence presented to the Secretary shows that the automakers have made good faith attempts to lick this technological problem and have failed to meet standards set in the bill by January 1, 1975, he can, and should, grant suspension.

I think we can rely on the good faith and the bona fides of the Secretary of Health, Education, and Welfare. I do not think that he would use the suspension power which we have granted him in this bill lightly or casually. It is my understanding that he would only grant such a suspension after a long and exhaustive administrative proceeding at which all points of view, including the point of view of the environmentalist and conservationist groups, had been heard, considered, and digested. To subject his final determination in this regard to judicial review would seem to me to be unwise and unwarranted. As I have said, it might well delay the implementation process of this bill.

While there are other more technical corrections which I think we can make in the bill, they are for the most part perfecting amendments as distinguished from substantive changes. I think, on the whole, that the Congress should feel a sense of accomplishment with this bill. I think we have met the problem of air pollution head on. There is no shirking or avoiding in this bill; it is a sweeping public statement by Congress that it is a national goal and a high national priority to diminish the level of air pollution which we currently have in the Nation and a full-fledged confrontation with this great national problem.

Many, many long hours of thought and work have gone into this bill. It is a comprehensive and, to a certain extent, complex piece of legislation, but we are dealing with a far-reaching and a very complex subject that needs and demands the frontal attack which we in the Committee of Public Works have mounted by this bill. It is probably not a perfect piece of legislation. After all, we are none of us experts on chemistry or in chemical contaminants, but we have availed ourselves of the expertise which we could find extant in the executive

branch, and we have heard from industry and numerous environmental experts in the private sector. It is my hope that Congress will pass this bill and send it to the President. I have every confidence that the President will sign it into law and that we will be on our way to finding a national solution for the staggering health problem of air pollution.

Mr. President, I yield back the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SPONG). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. CASE). The Senator from Tennessee is recognized for 5 minutes.

Mr. BAKER. Mr. President, a parliamentary inquiry. Is the pending amendment my amendment No. 926?

The PRESIDING OFFICER. Would the Senator please restate his parliamentary inquiry in loud and ringing tones. The Chair did not hear the Senator.

Mr. BAKER. The Senator from Tennessee apologizes to the Chair. His parliamentary inquiry was whether the pending business is his amendment No. 926.

The PRESIDING OFFICER (Mr. CASE). The Senator is correct.

Mr. BAKER. I thank the Chair.

Mr. President, I spoke on this amendment yesterday and pointed out that its purpose and intent is to exempt from the provisions of the warranty section of the bill a cost obligation running against the dealer or distributor.

It is clear from the bill, and I think it is clear from the language of the report, that no such result was intended and that the warranty provisions would run entirely against the manufacturer who, after all, is responsible for designing and manufacturing the automobile, which is the subject of this title.

But to make it abudantly clear, so that there can be no misunderstanding, the Senator from Tennessee felt it would be appropriate to provide that specific exemption in the body of the bill itself.

That is the purpose of this amendment. It was my understanding yesterday that the manager of the bill, the distinguished Senator from Maine (Mr. MUSKIE), was agreeable to accepting it. Since yesterday there has been the opportunity to have the amendment printed. It is on the desk of every Senator now. I have had occasion to discuss it with a number of Senators on both sides of the aisle.

I am prepared at this time to yield back the remainder of my time.

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

Mr. BAKER. Mr. President, I would be happy to yield to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, I take just a moment to reaffirm my support for this amendment, which I expressed on yesterday.

It does reflect the intent of the legislation and of the committee and clarifies that intent.

For that reason I support it.

Mr. President, I yield back the remainder of my time.

Mr. BAKER. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

Mr. BAKER. Mr. President, I move that we reconsider the vote by which the amendment was agreed to.

Mr. MUSKIE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. MUSKIE. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill insert a new section as follows:

"SEC. 14. If Reorganization Plan No. 3 of 1970 becomes effective prior to the date of enactment of this Act, wherever in any amendment made by this Act the term (1) "Secretary" or "Secretary of Health, Education, and Welfare" is used it means the Administrator of the Environmental Protection Agency, or (2) "Department of Health, Education, and Welfare" is used it means the Environmental Protection Agency."

Mr. MUSKIE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Maine is recognized for 5 minutes.

Mr. MUSKIE. Mr. President, I will not take 5 minutes to explain the amendment. This is a technical amendment. It is intended to make clear that if the President's proposed Environmental Protection Agency becomes law under the reorganization plan which he submitted to Congress, all references in the bill to the Department of Health, Education, and Welfare will relate to the new agency.

The amendment is necessary in the event that Agency becomes the administering Agency of this program.

Mr. President, I do not think there is any question about the amendment. If there is none, I yield back the remainder of my time.

Mr. BOGGS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

INTERIM REPORT BY SECRETARY OF THE INTERIOR—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Interior and Insular Affairs.

To the Congress of the United States:

In accordance with Public Law 89–605, as amended, I am pleased to transmit an interim report by the Secretary of the Interior which summarizes his progress in negotiations on a compact for the Hudson River Basin.

I share the Secretary of the Interior's concern over the need for coordinated comprehensive planning and action for the Hudson River Basin and strongly support the approach to negotiations provided for by Public Law 89–605, as amended. The involvement of the States and the Federal Government from the start of the negotiations has enabled both levels of government to have their respective voices heard in determining the most appropriate management solution for the complex problems of this important river basin. I am directing the Secretary of the Interior to proceed with his mission to reach an agreement with the States of New Jersey and New York.

RICHARD NIXON.

THE WHITE HOUSE, *September 22, 1970.*

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 3014) to designate certain lands as wilderness, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 12870. An act to provide for the establishment of the King Range National Conservation Area in the State of California;

H.R. 16710. An act to amend chapter 37 of title 38, United States Code, to remove the time limitations on the use of entitlement to loan benefits, to authorize guaranteed and direct loans for the purchase of mobile homes, to authorize direct loans for certain disabled veterans, and for other purposes; and

H.R. 18731. An act to increase from $20 to $40 per day the per diem allowance authorized in lieu of subsistence for members of the American Battle Monuments Commission when in a travel status.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 12870. An act to provide for the establishment of the King Range National Conservation Area in the State of California; and

H.R. 18731. An act to increase from $20 to $40 per day the per diem allowance author-

ized in lieu of subsistence for members of the American Battle Monuments Commission when in a travel status; to the Committee on Interior and Insular Affairs.

H.R. 16710. An act to amend chapter 37 of title 38, United States Code, to remove the time limitations on the use of entitlement to loan benefits, to authorize guaranteed and direct loans for the purchase of mobile homes, to authorize direct loans for certain disabled veterans, and for other purposes; to the Committee on Banking and Currency.

NATIONAL AIR QUALITY STANDARDS ACT OF 1970

The Senate continued with the consideration of the bill (S. 4358) to amend the Clean Air Act, and for other purposes.

AMENDMENT NO. 928

Mr. DOLE. Mr. President, I call up amendment No. 928.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to state the amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendment will be printed in the RECORD.

The amendment reads as follows:

On page 48, beginning with line 11, strike out all through line 6 on page 52, and insert in lieu thereof the following:

"(4) (A) Within twenty-four months but no later than twelve months before the effective date of standards established pursuant to this subsection any manufacturer or manufacturers may file with the Secretary an application for a public hearing on the question of a suspension of the effective date of such standards for one year. Upon receipt of such application, the Secretary shall promptly hold a hearing to enable such manufacturer or manufacturers and any other interested person to present information relevant to implementation of the standards.

"(B) In connection with any hearing under this subsection, the Secretary may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such is found or resides or transacts business, upon application by the United States and after notice to such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(C) Within six months after such receipt of the application for suspension the Secretary shall, if he finds upon a preponderance of evidence adduced at such hearing that a suspension is essential to the public interest and the general welfare of the United States, that all possible and good faith efforts have been made to meet the standards established by this subsection, and that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for sufficient period to achieve compliance prior to the effective date of such standards even with the full applications of section 309 of this Act, recommend to Congress that (i) the effective date of such standard be suspended for a period of only one year, and (ii) the emission standard that should be applied during any such suspension which standard shall reflect the greatest degree or emission control possible through the use of technology available.

"(D) The findings and recommendations required by this subsection shall not be subject to judicial review. Such recommendations shall be effective as law at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the recommendation is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor such recommendation.

"(E) For the purpose of this paragraph—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

"(F) Nothing in this paragraph shall extend the effective date of any emission standard established pursuant to this subsection for more than one year."

Mr. DOLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. Mr. President, we are under a time limitation of 1 hour.

The PRESIDING OFFICER. The Senator is correct, 1 hour, 30 minutes on each side.

How much time does the Senator from Kansas yield himself?

Mr. DOLE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 10 minutes.

Mr. DOLE. Mr. President, in 1968, moving sources were responsible for more than 42 percent of the total emissions of the five major pollutants—including 64 percent of the carbon monoxide and 50 percent of the hydrocarbons. In health effects, these pollutants may cause cancer, headache, dizziness, nausea, metabolic and respiratory diseases, and the impairment of mental processes. In particular, the President pointed out in his message on the environment that—

Studies show that exposure to 10 parts per million of carbon monoxide for approximately 8 hours may dull mental performance. Such levels of carbon monoxide are commonly found in cities throughout the world. In heavy traffic situations, levels of 70, 80 or 100 parts per million are not uncommon for short periods.

Solving our air pollution problems therefore depends on the achievement of significant reductions in automobile emissions. Because of this fact, the Public Works Committee determined that the establishment of motor vehicle emission standards is a policy decision so important to public health that it should be made by the Congress, rather than the Secretary of Health, Education, and Welfare. Because Congress has made the establishment of emission standards a question of congressional policy, it should retain the authority to review that policy decision on the basis of social, health, and economic considerations. Congress will have a complete record on the basis of the Secretary's findings, which will enable it to act expeditiously, if action is required.

Further, the argument for judicial review is convincing, but I cannot agree with that approach for several reasons. First, there is an increasing tendency to delegate responsibility for policy decisions to the judiciary. While that branch of Government is less susceptible to political and economic pressures, it has been increasingly subjected to the pressure of a growing backlog of cases. The senior Senator from Nebraska, in discussing section 304 of this bill, noted yesterday that Chief Justice Burger had called attention to the plight of the judicial system. The words of the Chief Justice are worthy of our serious consideration:

Meanwhile, not a week passes without speeches in Congress and elsewhere, and editorials, demanding new laws, new laws to control pollution, new laws to change the environment, new laws to allow class actions by consumers to protect the public; but the difficulty lies in our tendency to meet new and legitimate demands for new laws but without adequate considerations for the consequences on the courts.

The Senator from Nebraska also inserted the appendix of the fiscal year 1969 annual report of the Director of the Administrative Office of the U.S. Courts. It contained convincing figures that indicate the Congress must be very careful not to further overload the judicial system.

Although the provision for judicial review contained in the bill provides that the automobile manufacturers' petition would be expedited, the decision of the U.S. Court of Appeals for the District of Columbia is subject to review by the U.S. Supreme Court. It is likely that if the automobile manufacturers do not appeal, other interested persons or the United States will. Furthermore, there are other procedural safeguards incumbent in the judicial process that may delay the final decision on whether an extension will be granted until the issue becomes moot.

I believe congressional review, based on the Secretary's findings and recommendations, is the best answer to the difficult problem created by the establishment of a 1975 deadline.

Mr. President, let me read some excerpts from the amendment so that it may be fully understood.

The amendment reads in part:

"(4) (A) Within twenty-four months but no later than twelve months before the effective date of standards established pursuant to this subsection any manufacturer or manufacturers may file with the Secretary an application for a public hearing on the question of a suspension of the effective date of such standards for one year. Upon receipt of such application, the Secretary shall promptly hold a hearing to enable such manufacturer or manufacturers and any any other interested person to present information relevant to implementation of the standards."

The next section indicates that in connection with the hearings, of course, certain subpoenas and other procedures will be followed.

Section (C) states:

"(C) Within six months after such receipt of the application for suspension the Secretary shall, if he finds upon a preponderance

of evidence adduced at such hearing that a suspension is essential to the public interest and the general welfare of the United States, that all possible and good faith efforts have been made to meet the standards established by this subsection, and that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for sufficient period to achieve compliance prior to the effective date of such standards even with the full applications of section 309 of this Act, recommend to Congress that (i) the effective date of such standard be suspended for a period of only one year, and (ii) the emission standard that should be applied during any such suspension which standard shall reflect the greatest degree or emission control possible through the use of technology available."

Mr. President, I specifically note the language in section (D):

"(D) The findings and recommendations required by this subsection shall not be subject to judicial review. Such recommendations shall be effective as law at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the recommendation is transmitted to it unless, between the date of transmittal and the end of the sixty-day period either House passes a resolution stating in substance that the House does not favor such recommendation."

Mr. President, the chairman of our subcommittee and the ranking minority member of the subcommittee stressed time and time again that we are making very difficult policy decisions. They have been made time after time by Congress, but we have to accept the responsibility for making these very difficult decisions. The same is true with respect to emission standards for model year 1975. It seems to me that if we wish to be consistent, Congress must accept responsibility for extension of that deadline in the event the standards cannot be met.

While I have no quarrel with judicial review as an orderly procedure, in this instance where Congress imposes standards, if good faith efforts are made, an extension might be necessary. Why, should not Congress have the final word on whether or not the extension should be granted? By Congress making the final judgment, the automobile industry would not have to wait 1, 3, 4, 5, 6 months, or 2 years for a court to act, but would have a decision within 60 days.

I have no pride of authorship in the amendment. I believe it fits the situation. It puts the matter squarely up to Congress: Should we pass a law which everyone agrees imposes very strict standards, and then back away from it and say, "Leave it up to the Court or the Secretary." I feel if we are willing to impose deadlines today we should be willing to determine in the future whether the deadlines should be extended.

Therefore, I strongly suggest this amendment does offer some compromise.

Mr. President, in conclusion I wish to say that this amendment is the result of efforts by the subcommittee and the full committee to find the best possible avenue of resolving a very difficult problem. If we tell a great industry it must meet certain standards by January 1, 1975, or the 1975 model year, then as indicated earlier, we must accept the responsibility for making the final judgment. My amendment would be a substitute for language now contained in the bill and would give Congress this vital responsibility. It is patterned very much after the reorganization acts submitted by the executive branch from time to time.

If either the House or the Senate do not accept the recommendations of the Secretary, for a 1-year extension, then there is not a 1-year extension, but at least we then come to grips with the problem we created by the passage of this legislation. It occurs to me that in fairness to the industry, to the courts, and the Secretary, this should be a partnership. There should be a coming together and this amendment would provide that compromise because in the first instance the Secretary holds the hearings, he makes the recommendations, and we have 60 legislative days in which to act or not to act.

It does offer a compromise and we would not "pass the buck," so to speak, to the judiciary system of the United States.

Mr. BOGGS. Mr. President, will the Senator yield for 3 minutes?

Mr. DOLE. I yield 3 minutes to the Senator from Delaware.

Mr. BOGGS. Mr. President, I wish to commend the distinguished Senator from Kansas (Mr. DOLE) for offering this amendment, together with his excellent presentation and explanation of the amendment.

I wish to express my strong support for the amendment.

One of the most significant aspects of this legislation is the deadline proposed under section 202(b) which requires a specific degree of emission control by the 1975 automotive model year.

We must realize that a possibility exists that good faith effort will still find the automotive industry short of that low-pollution goal. Therefore, the committee wisely provided a provision for secretarial review, on the question of granting relief for 1 year in the deadline. Under the proposal made by the Senator from Kentucky (Mr. COOPER) and the Senator from Tennessee (Mr. BAKER) and incorporated into the bill, the Secretary's decision would be subject to judicial review.

The Dole amendment preserves the basic thrust of section 202(b)(4), but returns the responsibility for review of the Secretary's decision to the Congress.

It is my view that congressional review is more appropriate in light of the responsibility that the Congress is assuming in establishing a specific standard of emissions control.

The amendment of the Senator from Kansas (Mr. DOLE) encourages the Congress to meet that responsibility.

I am happy to join with him, and I do support his amendment.

I thank the Senator for yielding.

Mr. MUSKIE. Mr. President, will the Senator yield to me for a minute or two?

Mr. DOLE. I yield.

The PRESIDING OFFICER. The Senator from Maine has his own time.

Mr. MUSKIE. Mr. President, I support the amendment and the time in opposition should go to someone else. I would suggest, if he is willing, the Senator from Kentucky take the time in opposition.

The PRESIDING OFFICER. Who yields time?

Mr. COOPER. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 1 minute.

Mr. COOPER. Mr. President, the Senator from Delaware is controlling the time.

Mr. BOGGS. The Senator from Kansas is controlling time for those in favor.

Mr. MUSKIE. Technically I control time of those against.

Mr. COOPER. I understand the Senator from Florida (Mr. GURNEY) will offer an amendment to the amendment of the Senator from Kansas. Is it the Senator's intent to offer that amendment now?

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

Mr. COOPER. I yield.

Mr. GURNEY. Once we debate the issues on the Dole amendment I do intend to offer an amendment to the Dole amendment to change the time provision in the Dole amendment.

Mr. COOPER. Is the Senator prepared to offer his amendment now?

Mr. RANDOLPH. Mr. President, I cannot hear the discussion that is going on. I am not critical but I make the point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senate is not in order and the Senate will be in order.

Since the Senator from Maine is supporting the amendment, the minority leader or his designee will control time in opposition.

Mr. BOGGS. Mr. President, the Senator from Kentucky (Mr. COOPER) is in opposition.

The PRESIDING OFFICER. The Senator from Kentucky has control of the time in opposition. Does the Senator yield himself time?

Mr. COOPER. I yield myself 2 minutes.

Mr. President, if the Senator from Florida is not ready to send his amendment to the Dole amendment to the desk, I am ready to present my case against the Dole amendment.

Mr. GURNEY. Mr. President, if the Senator would yield, I shall be very happy to send my amendment to the desk. Then we can dispose of the whole thing.

Mr. COOPER. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time to the Senator from Florida?

Mr. DOLE. Mr. President, I yield 1 minute to the Senator from Florida.

Mr. GURNEY. Mr. President, I send an amendment to the amendment to the desk.

The PRESIDING OFFICER. The Chair is advised that the Senator may not offer his amendment until all time is yielded back or used on the pending amendment.

Mr. GURNEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GURNEY. Can the amendment simply be read? That is all I want to do.

The PRESIDING OFFICER. The amendment may be read.

The assistant legislative clerk read the amendments intended to be proposed to the amendment of Mr. DOLE, as follows:

On page 1, beginning on line 1, strike "Within twenty-four months but no later than twelve months".

On page 1, line 2, capitalize the word "before".

On page 1, line 4, after the word "application" insert the following: "in a timely manner to be determined by the Secretary".

Mr. GURNEY. Mr. President, I shall take just a minute to explain my amendment briefly, so the Senator from Kentucky can have the two amendments before him and present his argument to both.

All this amendment does is change the time provision in the Dole amendment in which application can be made to the Secretary for relief under the bill. The Dole amendment provides that application cannot be made before 2 years prior to January 1, 1975, when the standards take effect, and they cannot be made any later than 1 year prior to that date. My amendment simply provides that the automobile manufacturers may make application——

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

Mr. DOLE. Mr. President, I yield 1 minute to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GURNEY. My amendment merely provides that the automobile manufacturers may go to the Secretary at any time, in a manner to be determined timely by him, to present their case.

The reason why I am offering the amendment is that, as I understand it, a great deal of leadtime is necessary, somewhere between 2 and 2½ years, of tooling-up-time processes for the manufacturers, and that they need a longer time than 24 months.

Mr. DOLE. Mr. President, I yield 2 minutes to the Senator from Maine (Mr. MUSKIE).

Mr. MUSKIE. Mr. President, two issues have been raised. I would like to respond to the first one initially in the 2 minutes the Senator has just given me.

The issue raised by the Senator from Florida I shall discuss later, but, with respect to the Dole amendment, I support it. I supported it in committee. It was offered in committee as a substitute for the judicial review provision which is in the bill.

I support it for these reasons, all of which I think have been touched upon by the distinguished Senator from Kansas:

First of all, we are making a congressional policy decision if we enact the law. It is a serious one and without precedent. We have done it because of the urgency of the problem. If the policy is changed, only the Congress should change it. The advantage of the Dole amendment is that it would bring the decision back to Congress to be made. For that reason I support the Dole amendment.

The second reason why I support the Dole amendment is that this is a technical question. I think the judiciary, within the judicial review provisions in the bill, would find it difficult to come to grips with technical decisions of this complexity. On the other hand, in the administration we have an agency established by Congress which has developed the expertise, know-how, and background to review any request for a change in the deadline. The Dole amendment would put that machinery into motion. After it had completed its work, the Secretary would then make a recommendation to the Congress, and the policy decision would be made here, with the benefit of all the background developed by the Secretary in the administrative process.

So I think the Dole amendment is an ideal way to get at the question of whether or not to postpone the deadline at some point in the future. For that reason, I support it. I think it makes a great deal of sense. It was offered in committee. The vote was very close. As I recall it, it was 8 to 6. So the committee was pretty closely divided on it. For that reason, I have no hesitation to support this amendment, as I did in committee, to support it on the floor, and to urge the Senate to support it, as well.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I ask the Senator from Kentucky to yield me time.

Mr. COOPER. I shall yield the Senator, but first I yield myself 30 seconds.

This is an important amendment. It involves the only possibility of review, what I would call due process of law, in this provision of the bill. I can attest that it is hard to understand the bill, with all its provisions, even after working on it for weeks and months. The Senator from Maine knows that so well.

I would like to ask unanimous consent that we may have a quorum call, without the time being taken from either side, in order to get more Senators to listen to the debate on this bill which will have great impact upon the economic and social fabric of this country.

Mr. MUSKIE. Mr. President, is this to be a live quorum?

Mr. COOPER. No.

Mr. MUSKIE. I have no objection.

The PRESIDING OFFICER. The clerk will call the roll, and without objection the time will be taken from neither side.

The assistant legislative clerk proceeded to call the roll.

Mr. COOPER. 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. COOPER. Mr. President, I yield to the distinguished Senator from Michigan (Mr. GRIFFIN), but since this is a statement, as I understand it, or a discussion of the bill, I ask that the time be taken from the time allotted to the bill.

The PRESIDING OFFICER. The Senator from Michigan himself has the time on the bill.

Mr. GRIFFIN. I thank the Senator. Mr. President, I yield myself 15 minutes.

Mr. President, while Senators are considering the merits of the Dole amendment and the proposed amendment thereto offered by the Senator from Florida (Mr. GURNEY), I should like to address myself to some broader aspects of the bill.

I am deeply concerned about this bill because it introduces a novel concept to automotive emission control—the concept of brinkmanship. An industry pivotal to the U.S. economy is to be required by statute to meet standards which the committee itself acknowledges cannot be met with existing technology.

Mr. President, brinkmanship is risky business. It is especially risky when it is applied to a key industry, and when it is based upon such questionable premises.

Mr. President, there can be no argument about the need for establishing and pursuing air quality standards that will protect the public health. We are long past the day when anyone could think that improving our air quality will be neither painful nor expensive.

But another unavoidable fact is that air pollution—whether coming from factory smokestacks, automobile tailpipes, or backyard incinerators—is the end product of an otherwise highly successful economic system which is second only to the environment in assuring the physical well-being of most Americans.

Obviously, to the extent that it is reasonably necessary to penalize the economy to gain cleaner air, we must do so. But if we penalize the economy excessively—beyond what is necessary—we shall win no victory.

In that light, it becomes important to point up some of the problems which title 2 of the bill is likely to cause the automobile industry. It is significant that the most far reaching of these provisions was devised when the bill was considered by the subcommittee in executive session, long after hearings had been concluded. Indeed, as I understand it, there has never been testimony in either the House or Senate on the concepts put forth in section 202 of this bill. Because that is the situation, I want to develop some facts for the record—facts which otherwise might not come to the attention of Senators because of the absence of hearings on section 202.

Interestingly enough, for Congress to establish standards, as proposed in section 202 without even a hearing or the benefit of written comment, is to set an example which no administrative agency would dare to follow.

Amid the current fad to blame the automobile for a variety of problems, Congress should not lose sight of the fact that the manufacture, sale and servicing of motor vehicles is a vital industry in the U.S. economy. The availability of automotive transportation is a basic factor in the personal economy and daily living of most of the identical people we seek to protect from the effects of pollution.

Mr. President, 800,000 Americans are directly dependent upon the automobile industry for their livelihoods and more than 14 million other jobs are dependent

upon its products—in all, 28 percent of all private nonfarm employment in the United States. Cars and trucks generate 10 percent of all taxes collected by Federal, State, and local governments combined. Expenditures for automotive transportation account for more than 16 percent of our gross national product. Even a slight dip in auto sales, to say nothing of a strike at General Motors, sends shock waves throughout the financial community.

This bill, as written, proposes to give the automobile industry from 18 to 30 months to make a technological breakthrough that has withstood more than 15 years of research—and even this illogically short time frame ignores procedural requirements of the legislation which could easily consume in excess of 12 months.

This bill, as written, would saddle the automobile industry with additional problems, harassments, and unreasonable demands and expenses at a time when rapidly rising costs are already putting it under a severe handicap in competing with foreign producers—to the detriment of our balance of payments.

In short, Mr. President, this bill holds a gun at the head of the American automobile industry in a very dangerous game of economic roulette.

Such a monumental gamble should not be taken unless we are reasonably sure the potential results are worth the risk we incur. Let us look, therefore, at what it is that we actually stand to gain.

Section 202 of the bill would require that, by 1975, emissions of hydrocarbons and carbon monoxide be reduced by 90 percent below the 1970 levels. It would require that oxides of nitrogen, which are not now federally regulated, undergo a similar reduction 5 years after standards are set. Since the Secretary is expected to set standards in 1971, the 90-percent reduction in nitrogen oxides would be required in 1976.

At first blush, those sound like impressive gains. They are, in effect, a 5-year advance over the timetable that the President, supported by the Department of Health, Education, and Welfare, announced last February.

However, I think we need to look more closely at these legislatively imposed standards if we are to put them into perspective with the full record as it stands today.

To start with, it is interesting to note that last month the Council on Environmental Quality submitted data attributing 42 percent of manmade pollutants to transportation. I understand that the automobile share is set at 39 percent—39 percent, not the 60 to 90 percent that has been so frequently charged. It is a serious mistake to pin too much hope on cleaning up the air by cracking down on automobiles. Total elimination of automotive pollution would still leave us with more than 60 percent of the total pollution problem to deal with.

Yet this bill concentrates its heaviest fire on the smaller part of the job. It is another serious mistake to fall into the trap of thinking that stationary sources of pollution can be offset by reducing automotive pollution. It may be recalled that Mayor Lindsay recently enunciated that fallacious policy in reference to allowing expansion of Consolidated Edison's Astoria plant to relieve New York City's severe power shortage. He indicated it would be possible to offset added pollution from the powerplant by curtailing auto emissions—but the apparent logic of this position is quite misleading.

The fact is that the photochemical smog and the carbon monoxide concentrations caused, in large part, by automotive emissions are not to be confused with the kind of air pollution that brought on London's famous "killer fog" of 1952 or the 1948 tragedy in Donora, Pa. Those catastrophes were not caused by hydrocarbons, oxides of nitrogen, or carbon monoxide—the major automotive pollutants. They were caused by the combination of sulfur oxides and particulates, which come from stationary sources, including power generating plants. Motor vehicles contribute about 1 percent of the sulfur oxides and, even with leaded gasoline, about 3 percent of the particulates in our national air. I might mention that London's progress in cleaning its atmosphere has been accomplished by putting controls on everything but automotive vehicles.

Furthermore, the automobile contributes 39 percent of our total manmade air pollution only when pollutants are measured on a tonnage basis, primarily because of carbon monoxide. On the same weight basis, however, it takes something like 220 times as much carbon monoxide to attain the same "threshold health effect" as that which results from sulfur oxides. This was the judgment of California's health authorities, who have had more actual experience with pollution than anybody else, in setting their ambient air standards.

The point is that when pollutants are measured by their effects on health rather than by their gross weight, the automobile's role in the picture drops off sharply. In the June 1970 issue of Environmental Science and Technology, two University of California professors concluded that automobiles are responsible for only 12 percent of total U.S. air pollution when measured by pollution harmfulness.

Whichever figure we choose to accept—12 percent or 39 percent—much of this automotive pollution is being produced by older uncontrolled automobiles which predate the use of present emission controls. The committee report itself makes this clear. These older cars are being scrapped at the rate of more than 7 million a year. Let us look from an emissions viewpoint at the new and used cars which are replacing them.

Beginning in 1963, automobiles were equipped with crankcase ventilation systems which eliminate 20 percent of the hydrocarbon emissions from an uncontrolled vehicle.

Another 60 percent of the hydrocarbons and all of the carbon monoxide comes from the exhaust pipe. Beginning with the 1966 models in California and 1968 nationwide, exhaust controls substantially lessened that source of emissions. In the 1968 and 1969 models, 62 percent of hydrocarbons and 54 percent of carbon monoxide emissions were eliminated. Improvements in 1970 controls raised these percentages to 69 percent for hydrocarbons and 70 percent for carbon monoxide.

So, Mr. President, as we consider this bill, it is very important to keep in mind that the automobile industry already—due to their own efforts and due, certainly, to the prodding by governments, both State and Federal, has already about eliminated 70 percent of the pollutants coming out of automobile exhausts. Now, this bill would require the further elimination of 90 percent of the remaining 30 percent within a very short period of time—by 1975—even though the technology to do so does not exist today.

Of the 31 percent of the remaining hydrocarbon emissions, nearly two-thirds resulted from evaporation from the gas tank and carburetor. Evaporative control systems on all 1971 cars have virtually shut off that source of pollution.

All told, then, 80 percent of the hydrocarbons and up to 70 percent of the carbon monoxide emissions have been eliminated on 1971 models. Oxides of nitrogen will come under control in California in 1971 and nationwide in 1973.

The committee report cites testimony from the National Air Pollution Control Administration to the effect that these gains are illusory because present exhaust controls quickly lose their efficiency through use. However, NAPCA qualified this conclusion by noting that it was based on a broad interpretation of field surveillance tests conducted by the State of California.

Actually, these tests show that the durability of exhaust control systems has improved year by year with the technology. For 1969 cars, carbon monoxide emissions were more than 15 percent below the standard even for the greatest amounts of driving mileage reported. Even though hydrocarbon deterioration has been more resistant to solution, less than 6 percent of the hydrocarbon reduction has been found to be lost through deterioration at 50,000 miles of driving.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. GRIFFIN. I yield myself an additional 10 minutes.

Some experts allege that lead additives are a major factor in the deterioration of emission control. Reduction in the amounts of lead additives in gasoline appears to be a further step in improving the long-range performance of emission controls. More rapid progress will be made in this area as petroleum companies move almost daily to expand the availability of such fuels, for which the major part of current U.S. auto engine production is designed.

The best proof of how well present emission controls work is the fact that air quality already is improving as far as automotive emissions are concerned. Even in Los Angeles, with its steady increase in automotive population, the peak output of hydrocarbons and carbon monoxide was reached in 1966 and has been

steadily declining ever since. At the current rate—including the rate of automotive growth—even if no improvements in emission controls were made beyond the 1971 level, by 1980 Los Angeles would have less automotive hydrocarbons in its air than it had in 1940. Its carbon monoxide levels would be back to where they were late in the forties.

This much has been accomplished with relatively little additional cost to the car buyer and with relatively little sacrifice in vehicle performance. From here on, however, the costs go up sharply and the actual improvement to the atmosphere becomes less and less at each step.

Consider, for example, what the section 202 standards—which the automobile industry says it has no reason to hope it can meet by 1975—would accomplish as compared with the 1975 standards set by HEW, which the automobile industry has expressed confidence it can meet.

Whether or not our confidence in the industry's ability exceeds its own, the fact is that meeting the requirements of section 202 would result in only minimal improvements in air quality.

Since 80 percent of the hydrocarbon emissions already have been eliminated in the 1971 cars, under either the HEW requirement or section 202, the control would be nearly total by 1975—95 percent in the one instance and 98 percent in the other. Not a very significant difference.

Section 202 would bring oxides of nitrogen under 90 percent control 5 years after standards are set, compared with HEW's 83 percent by 1975. In New York City's own "Emission Inventory Summary," incidentally, only 18 percent of total emissions of oxides of nitrogen were attributed to surface transportation. That would seem to indicate that again section 202 offers a very limited amount of improvement over HEW standards—about a 1-percent reduction of oxides of nitrogen in New York City, for example.

Reduction of carbon monoxide levels would be 97 percent under section 202 and 86 percent under the HEW timetable. The significance of the gain, however, is somewhat dimmed by recent scientific findings that nature renders atmospheric carbon monoxide harmless in about a month's time. Formerly, it was believed that carbon monoxide lasted about 3 years, which would gravely increase the danger of cumulative buildup.

Unquestionably, any improvement at all in air purity is much to be desired. The desire, however, should not be allowed to overcome our sense of the practical. We are not living in Camelot, where the very elements could be controlled by decree.

Mr. President, in my several years in both houses of this Congress, I have never encountered so remarkable a statement as this passage from the committee report pertaining to section 202:

> The Secretary is expected to press for the development and application of improved technology rather than being limited by that which exists. In other words, *standards should be a function of the degree of control required, not the degree of technology available today.*

Mr. President, I suggest that confirms the statement I have made over and over again; that the technology for achieving the standards set in legislative concrete by this bill are not available.

Also according to the report, the standards envisioned by section 202 are derived from a paper presented in June of this year at the annual meeting of the Air Pollution Control Association by D. S. Barth of HEW.

What the report does not mention is that Mr. Barth, in presenting his paper, clearly and repeatedly stated that he was preparing a groundwork for standards rather than proposing firm conclusions on which official standards should be based.

In his calculations, Mr. Barth used what can only be called a "best ball" approach which at each step compounded the safety factors for health protection.

For present air quality, he used one-time peak values rather than statistically valid maximum readings. For desired air quality, he applied the lowest values ever reported, not the most widely-accepted values of what is needed to avoid detrimental effects on health. For the background concentration factor, he used the highest reported values of "natural pollution" rather than more generally accepted figures. And in anticipating the future growth of the automotive population, he went far beyond most estimates including that published by the Department of Transportation.

By using this "best ball" approach—that is, by assuming the worst at each stage of his calculations—Mr. Barth arrived at hypothetical vehicle emission goals which are from six to 20 times more severe than would be indicated if more widely accepted values were applied.

That is the basis of the standards proposed in section 202 with what the committee report refers to as, quote, "requirements for margins of safety," end quote.

If we are to believe both the bill and the automobile industry—one saying that these standards must be met by 1976 at the latest and the other saying that the technology for doing it is not yet in sight—we could be headed for an economic and transportation crisis in 5 or 6 years' time.

In this conneciton, I have mentioned that the automobile industry believes it could meet the 1975 standards proposed by the administration. I should also mention that there was one qualification to their promise. At the White House meeting last November, industry officials indicated their confidence in meeting the standards if and only if the 1970–71 Federal standards were stabilized through the 1974 model year. They emphasized that meeting the 1975 goals would require the full concentration of their efforts without being diverted onto interim goals. Imposing new 1975 standards and requiring a change of research effort at this point can only handicap the effort to meet either set of goals.

This is especially so because the automobile industry does not have 5 years, or even the 6 years the bill provides at the discretion of the Secretary of Health, Education, and Welfare, in which to come up with the answer. The leadtimes involved in the mass production of a machine as complex as the automobile at reasonable cost and acceptable reliability drastically reduce the grace period that the manufacturers would have.

If the provisions of the present bill were to take effect at the end of this session, the industry would have 3½ years left before starting up 1975 model production. Three and a half years is about the normal production leadtime, particularly for sophisticated antipolluting systems which may require major changes in the configuration of the vehicle. Even if production leadtime is compressed to 2 years, simple arithmetic shows that automotive engineers would have only 18 months in which to invent the new approach or 30 months if the industry can gain the 1 year only suspension of the standards provided for in the bill.

Actually, the industry does not have that much time because procedural requirements grant the Secretary 6 months in which to make his momentous decision on whether to grant the suspension. Then appellate provisions are provided—and I am sure they will be used no matter what the Secretary's decision is. These appellate provisions include an appeal to the circuit court of appeals which, I conclude, cannot consume less than 3 months, and application to the Supreme Court for a writ of certiorari which almost certainly would consume at least 3 months more.

During this period, cars cannot be built for the simple reason that the emissions systems are integral to the car design and the design cannot be established until the standards are set. In this connection, it is important to bear in mind that the Secretary, if he extends the statutory deadline, must establish new standards which are the most stringent that the technology can meet.

Even if the Secretary does this concurrently with his decision to extend the deadline, car manufacturers would be unable to build to that specification until they know for certain that the Secretary's judgment will not be overturned.

A few days ago, the junior Senator from Wisconsin (Mr. NELSON) released a letter he had written to the chairman of the Senate Public Works Committee. In that letter, which received wide publicity, the Senator criticized the automobile industry for claiming that it cannot do by 1975 what a group of students had already accomplished in the 1970 cross-country clean air car race.

Judging from what I have read in the papers and seen on television, that seemed like a plausible charge, and it was certainly a serious one. I therefore decided to look into the matter to determine for myself whether or not the automobile manufacturers are trying to pull the wool over our eyes.

I should like to summarize what I found out.

My colleague, the junior Senator from Wisconsin, said that the automobile companies "know the results—of the clean air car race—and are deeply embarrassed by them."

Of course the manufacturers know the results of the race. To their credit, sev-

eral of them were deeply involved in it—providing vehicles, special equipment, financing, testing facilities, and expert technical advice.

The junior Senator from Wisconsin went on to discuss the winning car, a highly modified 1971 Ford Capri. He said:

> What the giants of the automobile industry are claiming cannot be done, was demonstrated to the American public by a team of night students at Wayne State who are employed as technicians by Ford Motor Co. . . . without the financial or technical resources available to the auto industry.

The facts are these: The winning car was put together by a team of five students and two other young engineers. Three of the students and the other two team members are highly regarded engineers at Ford Motor Co. Without taking away from their accomplishment in the least, I am sure that they would be the first to acknowledge that they received not only every encouragement but financial and technical assistance as well from Ford Motor Co., which worked closely with them in selecting their emission control equipment.

Now let us consider what it is that the vehicle and others in the race are supposed to have demonstrated. It was said:

> The student-modified internal combustion engine using nonleaded gasoline surpassed not only the proposed 1975 Federal standards, but were far below the proposed 1980 Federal standards which your subcommittee has recommended be advanced for 1975. The above results demonstrate the fact that a 1971 Ford internal combustion engine can meet the proposed 1980 standards today.

It was also claimed that a total of nine of the cars in the race met the proposed 1975 standards and that two of them met the proposed 1980 standards.

The facts are that nobody knows whether any of these cars met the 1975 or the 1980 proposed standards. The reason is that none of them were tested by using either the present or the proposed Federal emission test procedures. This is not just a technicality. When we are measuring pollution in terms of parts per million—and that is what we are talking about—different test procedures can yield results that vary by 100 percent or more. That is why detailed test procedure requirements are an integral part of Federal emission standards.

The test procedures used during the clean air car race were less stringent and yielded lower results than would be obtained from the Federal Government's present and proposed procedures. Consequently, the race test results cannot be equated with the results that are obtained when a car is tested for emissions certification by the Department of Health, Education, and Welfare.

For the moment, let us assume that nine cars in the race would meet the proposed 1975 Federal standards and two would meet the proposed 1980 standards if tested in the prescribed manner.

It was argued that such results support those provisions of the legislation proposed by your Subcommittee on Air and Water Pollution which would require compliance with the proposed 1980 Federal emission standards by 1975. Senator NELSON said:

> One can also conclude that the accomplishments of the Wayne State University students with a minimum of experience with a major manufacturer should be well within the expertise of all segments of the entire automobile industry.

Of course, there is no question that automobile manufacturers could build cars exactly like the Wayne State Capri. The question is whether this would be a practical and realistic way of meeting the emission standards we are now being asked to freeze into law.

Let us take a look at that car. To make up for the loss of performance resulting from the complex emission control equipment added to the car, an engine three times as big as the standard engine was installed. To make up for the loss of performance and fuel economy resulting from the extra weight and the emission equipment, the car was lightened by substituting plastic for much of the original steel and glass and removing virtually all of the interior trim and unessential hardware—hardly a practical substitution for normal use.

The principal modifications, of course, were the addition of an extremely complex and costly emission control system, including four platinum catalytic converters. Aside from the very high cost of the platinum in the exhaust system, the fact is that there is now a worldwide shortage of platinum and it is totally impractical to contemplate use in production line cars of large quantities of this precious material, such as was used in the winning car.

Furthermore, the car and its emission control equipment were specifically designed merely to meet the requirements of the race—that means designed to get across the country once, in good time and with minimum emissions. They were not designed to perform satisfactorily for 50,000 miles as demanded by the warranty provisions of the clean air bill. In fact, the winning car suffered a 60-percent deterioration in hydrocarbon control on its 3,600-mile trip.

The car entered in the race was a car that would cost substantially more than today's cars to build, and would probably require frequent replacement of its platinum converters.

In short, there is no basis for the conclusion that this car or any other car in the race represents an immediately available, practical way to meet the emission standards included in the bill. All that is proved by the results of the race is that it is possible, if cost and practicality are no object, to build a car that comes close to meeting the proposed standards for somewhat less than 4,000 miles.

A serious problem in the bill is the warranty provision. The warranty provision is impractical, and I suggest that it may be unenforceable. In the first place, a warranty based on emission standards requires some method of measurement in the field. I understand that at present it would require some $50,000 worth of equipment and several trained technicians and would take 13 hours of time to measure and test the performance of one car.

I am aware of the fact that the committee report speaks about development by the HEW Secretary of a quick-testing procedure.

Interestingly enough, I find no reference whatever to this in the bill. There is no assurance whatever that the HEW Secretary will be able to develop such a quick-testing procedure—or when he will be able to do so. Many people have been trying to develop a quick, inexpensive testing procedure—and they have had little success so far.

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

Mr. GRIFFIN. Mr. President, I yield myself an additional 2 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for an additional 2 minutes.

Mr. GRIFFIN. Mr. President, the goals set forth in this bill are commendable. There is no reason that we should not put as much pressure as we can reasonably place upon the automobile industry to meet reasonable goals to control the pollution caused by automobiles. I am all for that.

I am very deeply concerned, however, that in this particular legislation, the Senate seems to place itself in the position of scientists and automotive engineers. As Senators, we do not have the expertise that is needed. And, obviously, the committee is not willing to delegate any authority to those who do have expertise.

President Kennedy announced a goal when he said we would go to the moon by a certain date. But no one suggested a law that would have put space industries out of business if we had fallen short in developing the needed technology.

Certainly some expertise—more expertise than the junior Senator from Michigan has, should be employed in determining what is feasible and reasonable in this field.

The Senator from Kansas has offered an amendment, and I know he believes it moves in the right direction. Frankly, I think it does not. He would provide for a 1-year extension period dependent upon another vote of Congress.

Frankly, I think one of the problems with this legislation right now is that—and I say this with all due respect for my colleagues and without pointing the finger at either side of the aisle—too many of the decisions with regard to this bill are being made on a political basis.

I know it is difficult politically to vote for any amendment that would be characterized by the press as weakening the clean air bill. Everyone is for clean air and against pollution.

But without an adequate understanding of what is really involved in some respects, I am afraid that some Senators—and I say this with all due respect—will be casting their votes on a political basis.

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

Mr. GRIFFIN. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 additional minutes.

Mr. GRIFFIN. If these standards prove to be completely unrealistic and threaten to put the automobile industry out of business, the amendment offered would

require the industry to come back to Congress for what I fear could be another political decision. I believe the decision should be in the hands of an administrator who, surrounded with experts, can look at facts objectively.

I believe the amendment offered by the Senator from Florida is helpful and that it would provide a little more flexibility. I shall vote for it, but, unfortunately, I shall then vote against the amendment offered by the Senator from Kansas.

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

Mr. GRIFFIN. I believe we are back on the amendment now.

Mr. DOLE. Mr. President, I yield myself 2 minutes. First, I wish to inquire of the time remaining.

The PRESIDING OFFICER. Thirty minutes remain on the amendment.

Mr. DOLE. How much time remains on my side?

The PRESIDING OFFICER. The Senator has 25 minutes remaining.

Mr. DOLE. Mr. President, I wish to say to the distinguished Senator from Michigan, first of all, that I commend him for pointing out and emphasizing what a tremendous burden we place on the automobile industry. I share the views expressed by the distinguished Senator from Michigan. As he indicated, there is a tremendous problem and my point is we create the problem by fixing a date for imposition of certain standards.

We should be willing to face up to that problem in the future. Congress should be willing, at that time, to make a judgment on whether there should be an extension. We should not pass that judgment on to the courts.

I have been doing some checking to find out how long it takes for a case to go from the court of appeals to the U.S. Supreme Court. I would guess the average time would be several months and perhaps a year or longer. It occurs to me that if we are willing in the first instance to impose stringent standards, we should not duck the responsibility when it comes to changing those standards. I hope the Senate will accept the principle that we do provide for an extension. My substitute provides for an extension. After a determination by the Secretary of Health, Education, and Welfare, who has the expertise, and in the event the House and the Senate do not act, the deadline is then extended for not more than 1 year. I am unable to say what will happen in conference. The House bill has no such provision.

I know the Senator is aware that we are making an effort to be of assistance to him and others.

The PRESIDING OFFICER. Who yields time?

Mr. COOPER. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. COOPER. Mr. President, I understand the pending business is the question of whether or not the Dole amendment will be substituted for section 202(b)4 in the bill, which was a subsection placed in the bill in committee by an amendment offered by the Senator from Tennessee and me. The choice is clear cut.

I might say that the Senate can make a choice of the type review it wants. The original draft of the bill in committee provided no review of the effective date to the manufacturer. The bill, as we all know, provides that by January 1, 1975, or by the time the 1975 model is ready to be introduced into commerce, the automobile must be in conformity with standards proposed by the bill to be fixed by law. I support that provision.

As I said, under early drafts in the committee, if it should develop that in the intervening time the automobile companies could prove that using all available technology, and proceeding in good faith, they were not able to meet these standards, they would have no way to present it except that Congress might act as it saw fit.

I know of no other pollution control bill, which does not provide for a review of administrative decisions. I think it is unfair to any group of citizens in our country not to provide for them a method of review, a method whereby they can be dealt with fairly. That is the principle of due process which is imbedded, not only in our Constitution but throughout our legal system. It is a process provided by the 14th amendment to the Constitution.

The amendment which the Senator from Tennessee (Mr. BAKER) and I offered, in Committee, which was adopted by a vote of 10 to 3 in committee—equally divided on both sides of the aisle, majority and minority—is identical with the Dole amendment in the first requirement. In both provisions the manufacturers, upon application to the Secretary, may present their case and must prove that they have acted in good faith and exhausted all reasonable possibilities to come into conformity with the required standards.

Following the administrative proceeding, the Secretary makes a decision either granting or denying an extension of 1 year. At that point our amendments differ.

The amendment of the Senator from Kansas provides that the Secretary's decision granting an extension shall become final within 60 days, unless within that period one House of Congress by resolution overturns that decision. The amendment which was adopted in committee provides that within 30 days of the Secretary's decision the applicant or other interested party can appeal to the U.S. Court of Appeals for the District of Columbia. There is no further trial, the action of the court of appeals shall be taken on the record made by the Secretary; and such record shall be presumed to be correct. Following the court of appeals decision the applicant, or any other intervenor could carry the case to the Supreme Court, if he so desired.

It has been said this is a long procedure, but if it took longer than 1 year the case would become moot. There is no remission of emission standards and requirements during the period of appeal.

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

Mr. COOPER. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 2 additional minutes.

Mr. COOPER. Mr. President, the committee will make every provision to expedite the matter. I think it is eminently fair.

Under the present law, the law we are amending, the Secretary is required every year to make reports to Congress and, of course, Congress, at any time, can take whatever action it desires.

I point out that the amendment of the Senator from Kansas would provide 60 days between the finding of the Secretary and the required action by Congress.

Mr. President, when we think of the year and one-half spent in developing this bill, I submit that 60 days permits little if any substantive consideration by Congress. In fact, if one house acted quickly, the other house would be frozen out of any action.

I can think of no instance where there is not provided to our citizens an opportunity to have an administrative decision reviewed by the courts. The courts by design and tradition are insulated and therefore are less subject to pressure and emotion than even Congress. I think judicial review is best in this case.

This remedy is available not only to the manufacturers. The Secretary could permit other interested parties to intervene. The Sierra Club, other conservationists, and Mr. Nader could present their case. They, too, could appeal to the courts if they so desired.

I ask the Senate to return the constitutional method of due process. I think it is fair to all parties concerned and fair to the Congress.

Mr. BAKER. Mr. President, will the Senator yield me 5 minutes?

Mr. COOPER. I yield 5 minutes to the Senator from Tennessee.

Mr. BAKER. Mr. President, I oppose the Dole amendment. I support the committee version. I have no great quarrel with the Dole proposal. The Congress is faced with this basic problem. Do we require in this bill an accomplishment for the automobile industry that we are not certain can be accomplished, at least by the time set forth—1975? The answer we have made in the bill we have reported is, "Yes, we do," and I support that for the reasons I noted in my opening statement.

The committee has decided that the automobile industry can accomplish the emissions standards we require in the bill in the time established. But I believe, in view of the element of doubt that still remains, we should require a realistic escape hatch, so that, if we guessed wrong, someone can administer redress.

That redress can come from three sources. It can come from the executive department; it can come from the legislative department; or it can come from the judiciary. That really is the question that confronts us on the Dole amendment. Where do we put it?

There is a good bit to be said for each case and a good bit to be said against

each. Of the three propositions, none is perfect. I prefer judicial review, and I shall elaborate on that in a moment.

I gather, from the remarks of the distinguished Senator from Michigan, that he would prefer that the judgment on relief be vested in the Executive department, in the Secretary. I judge, further, that the only fair intendment of the proposal of the junior Senator from Kansas is that it be vested in the legislative department, in the form of a plan similar to that found in the Reorganization Act.

The proposal in the bill offered in concert by the senior Senator from Kentucky and myself provides for review by the judiciary, but on a very limited basis, on the basis that the relief the court can grant is circumscribed to one question only: That the extension beyond 1975 will be granted for 1 year or it will not be granted for 1 year; and that the extension can be granted, if it is to be granted, only on certain specified statutory grounds.

We do not run the risk that the court will insert itself into policymaking determinations in this field, as it must restrict itself to the basis of jurisdiction conferred on it by the statute.

What are the relative merits, really, of the three contentions? I believe the question before the country in 1975, if the automobile industry has not succeeded in producing a clean car according to the statutory standards, will be essentially a question of fact—that is, whether the industry applied good faith efforts and whether it was possible within the then state of the art to produce a clean car.

Questions of fact, historically and traditionally, are best tried, and have always been best tried, except in certain specific instances, by the judiciary. They are certainly more amenable to being tried in the judiciary than they are by 535 legislators. The procedure for determining these issues is already formalized and imbedded in the judicial precedents of this country, indeed reduced to writing in this statute.

But, not least of all, it occurs to me that if in 1975 the automobile industry, for whatever reason, has not produced a clean car, the amount and type of interest in the judgment of the Secretary, the Congress, and the courts will be extraordinary indeed, because the net effect of this statute, Mr. President—and I think it is important that we realize it—is to simply say, "Produce a clean car by 1975 or stop producing internal combustion cars."

If there is to be a 1-year reprieve, I have an idea that there will be a substantial interest in the proceedings by which that is determined. I believe the court, in the sanctity of its judicial undertaking, in the calm, cool deliberations of its factfinding function, in its detachment from the immediate pressures——

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

Mr. COOPER. Mr. President, I yield 2 minutes to the Senator from Tennessee.

Mr. BAKER. Is best suited to undertake this task, rather than 535 legislators, 435 of them standing for election in 12 months and one-third of the Senate standing for election in 1976, to say nothing of the pressure, the heat, and the confrontation of a political campaign for President in 1976. The Congress is probably the least likely place to have clear, calm determination of that fact issue.

Congress is perfectly within its right to reserve to itself the determination of this issue of fact, but I believe we are doing ourselves a disservice if we do not vest it in the judiciary.

That leaves only the other alternative, then, of the executive department. I would have no great quarrel with letting the Secretary decide whether or not the automobile industry had used good faith and had made its very best effort to produce a clean car by 1975, but this may be the biggest industrial judgment that has been made in the United States in this century. It may have the biggest impact on the economy that any of us have participated in in recent years. It is going to be of extraordinary importance and an extraordinarily emotional situation if the industry has not produced a clean car, according to this formula, by 1975.

I can guarantee my colleagues that, whatever judgment we make, whichever of the three departments we elect to determine whether or not the industry would have a 1-year reprieve in the event it had not produced a clean car, will not be perfect. I think we must realize that the best we can do is the best we can do and that there will be a great deal of criticism of whatever judgment we make, but I believe the judiciary is the one best equipped, best suited, and best able to make this determination.

Mr. MUSKIE. Mr. President, I wonder if the Senator from Kansas wanted to ask for the yeas and nays on his amendment.

Mr. DOLE. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. SPONG. Mr. President, will the Senator from Kentucky yield me 2 minutes?

Mr. COOPER. Mr. President, I yield the Senator from Virginia 3 minutes, and more if he needs it.

Mr. SPONG. I thank the Senator.

Mr. President, the question on the Dole amendment is the determination by the Senate of the best method by which the Secretary's decision concerning the capability and technology available for the automobile industry to meet what this bill requires of it by January 1, 1975, can best be judged to be correct.

I want to concur in the statements already made that, as between Congress deciding within a 60-day period whether the Secretary has been correct in his judgment, and a court of law deciding it, having the right of subpena, the right of discovery, the right of calling expert witnesses, and making a judgment, we would be serving the public interest if we placed this issue where it would be subject to judicial review rather than our own.

For that reason, I oppose the Dole amendment and support the amendment offered in the committee by Senators COOPER and BAKER.

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

Mr. SPONG. I yield.

Mr. GRIFFIN. I associate myself with the Senator's line of reasoning. I personally would prefer an administrative decision. I think it would be better placed there. But I can see there would be very little chance that this body would accept that change.

But as to a choice between a judicial decision and what I regret to say, unfortunately, might be a political decision in Congress, I think the industry and the public would be better served by a judicial decision.

Mr. SPONG. I thank the Senator from Michigan.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I yield myself 2 minutes.

It is important that we review how these different procedures might apply. As the Senator from Kentucky pointed out earlier, the Dole amendment and the language now in the bill are very much alike in the initial stages. The first possible time that a petition could be filed with the Secretary would be September 1, 1972, if we take the model year, or January 1, 1973, if we go on a calendar date basis. Then we allow the Secretary 6 months to make a recommendation.

If we take the first date, the petition being filed on September 1, 1972, then he would have until March 1, 1973. If we take a calendar date, he would have until July 1, 1973. Then after that finding, if we use the judicial review approach, he would have 30 days in which to file a petition with the U.S. Court of Appeals in the District of Columbia. That would either be April of 1973 or August of 1973. I have been trying to determine just how long it might take for this case to be heard by the court of appeals. I have been informed that it might be as short as 3 or 4 months, but possibly it might extend to 6 months, 8 months, or even a year.

Then, of course, there is the right of appeal to the U.S. Supreme Court. The point I wish to make is that it would probably be a moot question, because it would never be determined by the Court by the time the 1975 model year was on the market.

I might ask the Senator from Kentucky a question at this point: In the event the Court has not made a final determination, and January 1, 1975, was rolling around, or the 1975 model was available, and the matter was still in court, what would be the effect of the judicial review section? Would the standards apply, or would they be held in abeyance while the Court made the determination?

Mr. COOPER. Mr. President, I discussed this in the short statement I made.

I point out, first, that even though application is made, there is no relaxation or postponement of the application of emission requirements. Automobile companies must continue to come into conformity, and if they have not reached conformity on the effective date, the burden would fall on them.

The Senator asks me what would hap-

pen if the court had not passed upon it at that time. We discussed this in the committee. The Senator from Virginia and I discussed it, and the Senator from Maine asked questions about it.

It was our judgment, first, that Congress can limit the courts in respect to the remedy they can grant and this the committee has done by limiting jurisdiction to a 1-year extension. Our judgment was that if it took more than 1 year to reach a decision, the case was moot, and the automobile companies would have to come into conformity or seek a remedy from Congress. On the other hand, I want to be straightforward and honest about it: I cannot determine nor direct how or when a court might determine the question of due process, and I do not believe anyone can do that. The provision does provide for an expedited procedure and I expect the court would make every effort to handle such a matter with dispatch.

I must say again, however, that I do not believe that the Senator's amendment provides due process. Although there is authority to the contrary, I still believe that even if no review is provided in this measure, an interested person could go into court and say, "I have been denied constitutional due process," and my judgment is that the court would grant some review. Thus the Senator's provision may still give rise to judicial review, without, however, the directions contained in the committee bill.

The committee bill places very concrete limits upon judicial review and I think it is as precise in its limits as any method of review can be.

Mr. DOLE. I say with all due respect to the distinguished Senator from Kentucky that this does appear to be a weakness in the judicial review section. There has been much stress on the point that time is of the essence, and we must make a final determination at the earliest possible time, unless we want to penalize unfairly a great industry in America.

Under the so-called Dole amendment, we have the same effective date, but then, after the Secretary makes his decision, he has 6 months. He would make that decision either on March 1, 1973, or July 1, 1973, again depending on whether he used the model year to determine the date or the calendar year. Then the Congress would have to act within 60 days. So we would be certain, that the decision made by one House of Congress or the decision made by the Secretary would be final not later than September 1, 1973, and perhaps as early as May 1, 1973.

I say again that perhaps the underlying weakness of judicial review, in this particular instance, is the fact that there might not be a decision by January 1, 1975, or by the time the 1975 model was on the market and we would then do a disservice to an important industry.

But if we make the judgment in the first instance, as we are about to do today, despite political pressures, political pressures which are surely greater now than they will be in 1975, because hopefully there will be progress and less pollution then, I am convinced that the political pressures will be something we can withstand.

If Congress is willing to impose stringent standards today, then Congress should be willing to face up to that judgment 2 years from now. If we were wrong, the extension should be granted; and if we were right, the extension should not be granted. Of course, if we are totally wrong or far off base, then perhaps the entire law would need to be revised. But it occurs to me that if we are willing, in September of 1970, to state that 5 years from now we are going to meet certain standards, then the same body, the same Congress, should say 2 years hence that we were right or we were wrong. We should make the final judgment; we should not pass it off onto some court because of imagined political pressures in Congress.

Mr. President, I reserve the remainder of my time.

Mr. GURNEY. Mr. President, I ask unanimous consent that my amendment to the pending Dole amendment be considered at this time.

The PRESIDING OFFICER. Is there objection?

Mr. MUSKIE. Mr. President, reserving the right to object, would the effect of the unanimous-consent request, if agreed to, be to terminate the time otherwise still available on the Dole amendment?

The PRESIDING OFFICER. No. It would allow the Gurney amendment to be called up at this time.

Mr. MUSKIE. Would the effect be to add the time on the Gurney amendment to the time still remaining on the Dole amendment?

The PRESIDING OFFICER. It would add 15 minutes to a side.

Mr. MUSKIE. I have no objection.

The PRESIDING OFFICER. Is there objection?

Several Senators addressed the Chair.

Mr. RANDOLPH. Mr. President, I would like the Chair to clarify one thing. He may already have done that, but——

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, reserving the right to object——

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield the Senator 1 minute.

Mr. MUSKIE. Mr. President, I yield the Senator from West Virginia a minute on the bill, or whatever time the Senator may require.

Mr. RANDOLPH. I would simply like a clarification from the Presiding Officer that perhaps has been given, but I could not hear it.

I first inquire, if this is not permitted as requested by the junior Senator from Florida, what time now remains on the Dole amendment?

The PRESIDING OFFICER. One minute to the Senator from Kansas, 8 minutes to the Senator from Kentucky.

Mr. DOLE. Mr. President, reserving the right to object, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. In either event, the first vote would come upon the Gurney amendment; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time?

Mr. BOGGS. I yield the Senator 1 minute on the bill.

Mr. BAKER. Will the Chair inform the Senator from Tennessee if he is correct in his understanding that the Gurney amendment would be subject to the limitation previously agreed upon?

The PRESIDING OFFICER. There would be a limitation of one-half hour, 15 minutes to the side.

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Florida? The Chair hears none, and it is so ordered. The amendment will be stated.

AMENDMENT NO. 928

The legislative clerk read the amendment, as follows:

On page 1, beginning on line 1, strike "Within twenty-four months but no later than twelve months".

On page 1, line 2, capitalize the word "before".

On page 1, line 4, after the word "application" insert the following: "in a timely manner to be determined by the Secretary".

Mr. GURNEY. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. GURNEY. Mr. President, this amendment would change the time provisions in the Dole amendment in which application for relief may be sought under the Dole amendment. We have been talking in the last 15 or 20 minutes, on the argument of both the Dole amendment and the provision now in the bill about the judicial review, about the importance of time. Time is important in this provision, because there has to be a very considerable lead time for the automobile manufacturers to jell their model, the elements that go into the model as well as the antipollution device, and order tools to manufacture the antipollution device; and I am informed that it means a very considerable body change. So there will have to be many tools besides the ones needed to manufacture the antipollution device. All this requires time.

This is a tough bill. We all admit that it is so. That is the reason why we have in the bill at this time a review method, so that relief can be obtained from this bill for at least 1 year, under the judicial review measure. That is why the Senator from Kansas (Mr. DOLE) has offered his differing amendment for relief, also, because no one is sure in the automobile industry, in the Public Works Committee which heard this matter, or in the Secretary of Health, Education, and Welfare's shop whether the automobile industry can meet this January 1, 1975, deadline. Everyone says that right now it is not within the state of the art, although we will hope that it can be met by January 1, 1975. The point is that if it cannot, then we must have relief for this great industry in America

that employs so many people and means so much to the prosperity of the country.

I have heard all kinds of differing people on what kind of leadtime is required by the automobile industry. Some say 3 years; some say three and a half years. The shortest I have heard is 2 years.

The Dole amendment provides that the automobile industry cannot make application to the Secretary until 24 months prior to the effective date of January 1, 1975. Then we add 6 months that the Secretary has within which to make his determination, and add 2 months more within which Congress has to either agree with the Secretary or not agree with the Secretary, and we have shortened the 24 months to 8 months less. I have not heard any statement from anybody that says that is enough leadtime within which the automobile industry can tool up and produce the 1975 models requiring this antipollution device.

All my amendment does is to take out this 24-month period and the 12-month period, and it puts in there this language: "in a timely manner to be determined by the Secretary."

In other words, the Secretary, himself may determine what is timely on the part of the automobile industry within which to make application for relief under this bill. No one is better prepared to make that determination than the Secretary. He has the experts within his shop who have been dealing with the matter of air pollution for a matter of years. As a matter of fact, I am informed that they continually check closely with the automobile industry in Detroit, finding out what is going on within the experimental stages now, within the research and development on this antipollution device; and the Secretary, indeed, would know when it was timely for the automobile industry to make an application.

I know that arguments will be made that the automobile industry is going to appear before the Secretary within a day or two after this bill is passed if we put in "in a timely manner." The other argument, on the other end of the pole, is that they will wait until the last minute. I do not believe that they have that bad faith, but I think something else will compel them to do otherwise. Obviously, the automobile industry is not going to go to the Secretary within a day or two or a week or two or a month or two after this bill becomes law, because they want the best case they can get, too.

The best case they can get is to wait as long as they can, showing the results of their research and development. On the other end of the pole, they are not going to wait until the last minute, either, because they cannot do that. They have to jell their model; they have to order their tools; they have to be in a condition to get in their 1975 models.

So it seems to me that the only sensible way to handle this matter is to leave it up to the Secretary to determine, when the application comes to him, and in a timely fashion. Then I think we will have a sensible approach to this matter and a relief method that will work.

I reserve the remainder of my time.

Mr. MUSKIE. Mr. President, I will not take too much time, but I should like to make some points that I think are relevant to the amendment.

First of all, the provision in the bill was written after consideration by the committee, without dissent in committee. The purpose of the provision is this: We wanted the provision for appeal to be made available late enough in this 5-year time frame so that the industry would make, and be forced to make, a good faith effort toward achieving the objectives of the bill before resorting to the courts. At the same time, we wanted to provide that there would be sufficient time to resolve the appeal and to get a decision so that the industry could then respond to that decision in its production schedules.

So the committee carefully, and after considerable deliberation, agreed on the 12- to 24-month formula. In other words, the appeal must be initiated and completed within calendar year 1973.

The question that the Senator from Florida raises and is concerned about is whether there would then be time to put production models into the process. Let me cite the record.

The California standards which were the first standards applying to automobiles, were adopted by California in May of 1964. The industry managed to incorporate them in the 1966 model cars, which were in the showrooms in the fall of 1965. In other words, a little more than a year after California imposed the standards, California automobiles were being manufactured in accordance with those standards.

With respect to Congress, Congress enacted the current law in the fall of 1965, applicable to the 1968 model cars, which were available in the fall of 1967. So that 2 years after the authority was given to the Secretary, and less than 2 years after the Secretary actually imposed the standards, the industry was producing cars that conformed to the standards.

Here is another piece of testimony that is revealing. It was by Vice President Ackerman, of Chrysler Corp., in 1959, long before pollution control standards were involved. At that time, without the pressure of deadlines, he said this:

> Once these hurdles are over—

He was talking about the hardware being available—

> Once these hurdles are over, we have said that we believe this thing could be available within a year.

So there is time to respond to the results of the review process, whether it is the review process incorporated in the bill, the so-called Cooper amendment, or the review process proposed by the Senator from Kansas (Mr. DOLE).

For that reason, Mr. President, I oppose the amendment and urge the Senate to vote against it.

I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Florida yield back the remainder of his time?

Mr. GRIFFIN. Mr. President, would the Senator from Florida yield to me, briefly?

Mr. GURNEY. I yield 5 minutes to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I rise to indicate my strong support for the amendment offered by the Senator from Florida. He points out that the lead time required by the industry is all-important to the applicability of this particular legislative measure.

Yesterday, the distinguished Senator from Maine, in discussing this measure, referred to testimony back in 1967 by Mr. Mann of the automobile association. He cited Mr. Mann's testimony as evidence that only 2 years was actually required to put such a change into effect, as I recall the statement.

Mr. MUSKIE. If the Senator will yield there, simply to clarify my use of the testimony, it was to indicate that by the testimony of the industry itself, not more than 2 years was necessary. There is evidence, which I have already placed in the RECORD today, indicating less than that time is sufficient.

Mr. GRIFFIN. I want to read from Mr. Mann's testimony. It appears on page 402 of the hearings of 1967. He says:

> Normally what I have referred to in the preceding paragraph takes approximately two years, in addition to the time needed for research, design, and development stages.

On yesterday, in a colloquy with the Senator from Maine, I said that it could take as much as 43 months from the drawing board stage until automobiles actually come off the assembly line—that much time to incorporate such technology—if and when it is available. At the present time, it is not available.

So, I wish to emphasize that the 2 years referred to yesterday is in addition to such time as would be needed for research, design, and development.

The Senator from Florida, I think, moves in the right direction by providing some measure of flexibility. He makes the case, very wisely, that there would be no reason or motive for the industry to rush in without a case, so that they would not go in prematurely in any event. But they would like the opportunity to go in as early as the case is available to make sure that this legislation will not absolutely close the automobile industry down—and that could happen if we put them in a completely unrealistic straitjacket.

Accordingly, I hope very much that the amendment of the Senator from Florida will be agreed to.

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

The PRESIDING OFFICER (Mr. PACKWOOD). Seven minutes remain to the Senator from Florida.

Mr. GURNEY. I shall not take all 7 minutes but I would like to reply to the Senator from Maine in his arguments against the amendment.

I could detect only two arguments against it. One has to do with the fact that California standards as applied to aid emissions and requiring pollution devices in California a few years ago did not need the amount of time that I am talking about. I do not see that this is an analogous situation at all. What was done in California a few years ago is

nothing so drastic as what we are proposing to do here. We go way beyond the California standards.

What I am saying is that perhaps California standards could be met in the 2-year leadtime, but now we have a completely changed situation.

Mr. MUSKIE. If the Senator from Florida would yield on that point, the attitude of the industry prior to the time it was required to conform to the California standards was the same as it is in this case. They said it could not be done. But, it was done.

Mr. GURNEY. Then I might further treat with the other argument made by the Senator from Maine, which seems to me to be even more untenable. I, too, read the testimony he read to the Senate a short time ago, the testimony by the vice president of General Motors Corp. in 1959. That was 11 years ago. We have proceeded 11 years beyond 1959 in this pollution business.

We have here now a bill that is as different from the situation he was talking about in 1959 as the North Pole is from the South Pole. They could not be further apart. Thus, I do not think the arguments made by the Senator from Maine are viable in either case.

Finally, in closing and wrapping up the arguments on behalf of my amendment, I do not disagree with the Dole amendment. I am supporting it. It is a good one. But I also think, as the Senator from Michigan (Mr. GRIFFIN) just pointed out, that if we put in the arbitrary dates of 24 months before this that the automobile industry must apply, it cannot apply any later than 12 months before that date, we do, indeed, put them in a straitjacket.

The facts and circumstances are, when we all admit, in the committee, in the industry, and the people in Government who are experts in this business, that we do not even know whether they can be met, the industry itself says it does not have the technology to do it, although it hopes to be able to meet it. Under these facts and circumstances, we look ridiculous in the Senate not to give the Secretary of Health, Education, and Welfare a little leeway as to when he will receive this application for relief.

All I say is that my amendment makes more viable, more sensible, and more reasonable when this application may be presented to the Secretary of Health, Education, and Welfare.

Mr. President, I yield back the remainder of my time.

Mr. MUSKIE. Mr. President, I should like to read one quotation to the Senate from a letter by President Cole of General Motors, dated January 31, 1969, which reads:

> It is apparent that it is technically feasible to achieve very low pollution levels with internal combustion engines—levels at least as low as known ambient air quality needs. More importantly, of the various approaches to controlling vehicular pollution, the gasoline engine seems to offer a better cost-benefit relationship than the unconventional powerplants in the lower right-hand corner of these charts.

May I also read from the hearings of 1967. This is testimony by an industry spokesman:

> Since the late 1940's, General Motors engineers and scientists have been doing basic research on emissions and developing the results of these into practical hardware. Between now and 1980, we sincerely believe that current research and engineering development programs on our current gasoline engines will result in continued progress toward solution of this important problem.

Later in the testimony, there was the same pessimism about meeting deadlines that the Senator has expressed.

Since the late 1940's, a quarter of a century ago, the industry has been occupied with this problem by its own statements. It has been developing technology. Every time it is pressed to apply the technology, it pleads for time. It says it is not possible. It said this to California in 1964. It said this to us in the hearings in 1964 and in 1965. It says it again now.

What we need in this 5-year period is a period not only for production line work but also time for development of the concepts which have been on the drawing boards all these years. Because that is time the committee does not want to reduce, that is why we fix a time when the appeal time starts. It is as simple as that.

Mr. GURNEY. Let me point out that the Senator and I do not disagree on the applicable time——

The PRESIDING OFFICER. The Chair would advise the Senator from Florida that he has yielded back his time.

Mr. MUSKIE. I yield 1 minute to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 1 minute.

Mr. GURNEY. I thank the Senator from Maine.

We do not disagree on that at all. My amendment, of course, in no way weakens the applicable standard date, which is January 1, 1975.

It simply revises the method and the time by which the automobile industry could make application to the Secretary, which I think is reasonable.

Mr. MUSKIE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Florida to the amendment of the Senator from Kansas. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Tennessee (Mr. GORE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. PELL), the Senator from Alabama (Mr. SPARKMAN), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) and the Senator from Missouri (Mr. SYMINGTON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Nebraska (Mr. HRUSKA), the Senator from California (Mr. MURPHY), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Maryland (Mr. MATHIAS) is detained on official business.

If present and voting, the Senator from New York (Mr. GOODELL), the Senator from South Dakota (Mr. MUNDT), the Senator from California (Mr. MURPHY), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 22, nays 57, as follows:

[No. 321 Leg.]

YEAS—22

Bennett	Hart	Saxbe
Cotton	Hatfield	Smith, Ill.
Curtis	Holland	Stennis
Eastland	Jordan, Idaho	Thurmond
Fulbright	Miller	Williams, Del.
Griffin	Packwood	Young, N. Dak.
Gurney	Pearson	
Hansen	Russell	

NAYS—57

Aiken	Eagleton	Metcalf
Allen	Ellender	Mondale
Allott	Ervin	Montoya
Anderson	Fong	Muskie
Baker	Gravel	Nelson
Bible	Harris	Pastore
Boggs	Hartke	Percy
Brooke	Hollings	Prouty
Burdick	Hughes	Proxmire
Byrd, Va.	Inouye	Randolph
Byrd, W. Va.	Jackson	Ribicoff
Case	Javits	Schweiker
Church	Jordan, N.C.	Scott
Cook	Long	Smith, Maine
Cooper	Mansfield	Spong
Cranston	McCarthy	Talmadge
Dodd	McClellan	Williams, N.J.
Dole	McGovern	Yarborough
Dominick	McIntyre	Young, Ohio

NOT VOTING—21

Bayh	Hruska	Murphy
Bellmon	Kennedy	Pell
Cannon	Magnuson	Sparkman
Fannin	Mathias	Stevens
Goldwater	McGee	Symington
Goodell	Moss	Tower
Gore	Mundt	Tydings

So Mr. GURNEY's amendment to Mr. DOLE's amendment (No. 958) was rejected.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BOGGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COOPER. I yield 5 minutes to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I suggest we might have a little order in the Senate.

The PRESIDING OFFICER. The Senate will be in order so the remarks of the Senator from West Virginia can be heard.

Mr. RANDOLPH. Mr. President, by a vote of more than 2 to 1 we have defeated the Gurney amendment and we now are approaching the vote on the

Dole amendment. I think the core of the problem as presented in the Committee on Public Works, and again as we have considered the matter in the Senate this afternoon, is, in effect, whether we are for or against judicial review which is embodied in the amendment offered by the Senator from Kentucky and the Senator from Tennessee in the Committee on Public Works.

The amendment of the Senator from Kansas was defeated in committee. The chairman of the Subcommittee on Air and Water Pollution has indicated that the vote was close. The vote was 8 to 6.

I think it is important, however, to realize that the vote in the Committee on Public Works on the Cooper-Baker amendment was 10 to 3 for that amendment.

Mr. President, I supported the amendment of Senators COOPER and BAKER in the committee. I did so because I thought it was important to have judicial review. I feel very strongly today, as I did then, that the bill, before the Senate, should include the Cooper-Baker language.

The basic reasons supporting such review have certainly been amply set forth during the consideration of this measure by other speakers, including Senators COOPER, BAKER, and SPONG.

Mr. President, in my opinion, judicial review is superior to the pending proposal of the junior Senator from Kansas (Mr. DOLE). It is superior because judges, I feel, will be less subject to the pressures and cross currents of opinions expressed outside the courtroom.

Furthermore, it is axiomatic that the Congress can act on the law, can amend it, at any time it believes circumstances necessitate such action.

If we abolish court review by defeating the Cooper-Baker amendment and approve the Dole amendment, then our only recourse would be to the Congress. If we sustain the principle of court review in the Cooper-Baker amendment, Congress can still act whenever conditions seem to require it.

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

Mr. MUSKIE. Mr. President, is there any time left?

The PRESIDING OFFICER. The Senator from Kansas has 1 minute, the Senator from Kentucky has 3 minutes.

Mr. DOLE. Mr. President, may I have 30 seconds?

Mr. MUSKIE. Mr. President, since there are Senators present on the floor who were not here earlier, I would simply like to say that I supported the Dole amendment in committee. I support it here, for the following reasons: First, if this bill is enacted into law, it is a congressional decision which ought to be modified only by Congress. Second, the Secretary would continue to have the staff and know-how necessary to do the job better than the courts. His recommendation would come to Congress. Congress would have to act affirmatively to affirm his recommendation.

Mr. DOLE. Mr. President, I yield myself 30 seconds to say the only difference between the Baker-Cooper amendment and my amendment is as to whether the court or Congress shall determine the matter. If Congress imposes the standards, we should make the judgment 2 years hence.

Mr. COOPER. Mr. President, I yield myself 1 minute to clarify a statement previously made. The Secretary, in each case, will first review all the evidence, with all its technical staff. This would be the record available in either case.

It should be noted also that the Baker-Cooper amendment was adopted in committee by a 10-to-3 vote. I would like to repeat that this provision will give the due process which I believe Congress wants to give to all its citizens.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. COOPER. I yield back my time.

Mr. DOLE. I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Kansas. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PELL), the Senator from Alabama (Mr. SPARKMAN), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) and the Senator from Missouri (Mr. SYMINGTON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from Kentucky (Mr. BAKER), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Nebraska (Mr. HRUSKA), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Maryland (Mr. MATHIAS) is detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT) and the Senator from Texas (Mr. TOWER) would each vote "yea."

On this vote, the Senator from California (Mr. MURPHY) is paired with the Senator from New York (Mr. GOODELL). If present and voting, the Senator from California would vote "yea" and the Senator from New York would vote "nay."

The result was announced—yeas 32, nays 43, as follows:

[No. 322 Leg.]

YEAS—32

Bennett	Gurney	Mondale
Bible	Harris	Muskie
Boggs	Hartke	Nelson
Church	Hatfield	Packwood
Cotton	Hughes	Pastore
Cranston	Jackson	Pearson
Dole	Jordan, Idaho	Proxmire
Eagleton	McClellan	Saxbe
Ellender	McGovern	Thurmond
Fong	Metcalf	Williams, N.J.
Gravel	Miller	

NAYS—43

Aiken	Fulbright	Randolph
Allen	Griffin	Ribicoff
Allott	Hansen	Russell
Anderson	Hart	Schweiker
Brooke	Holland	Scott
Burdick	Hollings	Smith, Maine
Byrd, Va.	Inouye	Spong
Byrd, W. Va.	Javits	Stennis
Case	Jordan, N.C.	Talmadge
Cook	Long	Williams, Del.
Cooper	Mansfield	Yarborough
Curtis	McIntyre	Young, N. Dak.
Dominick	Montoya	Young, Ohio
Eastland	Percy	
Ervin	Prouty	

NOT VOTING—25

Baker	Hruska	Pell
Bayh	Kennedy	Smith, Ill.
Bellmon	Magnuson	Sparkman
Cannon	Mathias	Stevens
Dodd	McCarthy	Symington
Fannin	McGee	Tower
Goldwater	Moss	Tydings
Goodell	Mundt	
Gore	Murphy	

So Mr. DOLE's amendment was rejected.

Mr. COOPER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 927

Mr. MANSFIELD. Mr. President, in behalf of the Senator from Washington (Mr. MAGNUSON), I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment (No. 927) is as follows:

AMENDMENT NO. 927

On page 79, beginning with line 6, strike out all through line 16 and insert in lieu thereof the following:

SEC. 213. (a) For the purpose of this section—

(1) "Board" means the Low-Emission Vehicle Certification Board;

(2) "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia;

(3) "motor vehicle" means any vehicle, self-propelled by mechanical or electrical power, designed for use in the United States on the highways except any vehicle designed or used for military field training, combat, or tactical purposes;

(4) "low-emission vehicle" means any motor vehicle which produces significantly

less pollution than the class or model of vehicle for which the Board may certify it as a suitable substitute; and

(5) "retail price" means (a) the maximum statutory price applicable to any class or model of motor vehicle; or (b) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

(b)(1) There is established a Low-Emission Vehicle Certification Board to be composed of the Secretary or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

(2) Any member of the Board not employed by the United States may receive compensation at the rate of $125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

(3)(A) The Chairman, with the concurrence of the members of the Board, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS–18 by section 5332 of title 5, United States Code.

(B) The Chairman may fix the time and place of such meetings as may be required.

(C) The Board is granted all other powers necessary for meeting its responsibilities under this section.

(c) The Secretary shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

(d)(1) The Board shall certify any class or model of motor vehicles—

(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

(B) which is a low-emission vehicle as determined by the Secretary; and

(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In making the determination under this subsection the Board shall consider the following criteria:

(i) the safety of the vehicle;

(ii) its performance characteristics;

(iii) its reliability potential;

(iv) its serviceability;

(v) its fuel availability;

(vi) its noise level; and

(vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

(2) Certification under this section shall be effective for a period of one year from the date of issuance.

(3) (A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in accordance with rules established by the Board and published in the Federal Register.

(B) The Board shall publish a notice of each application received in the Federal Register.

(C) The Secretary and the Board shall make determinations for the purpose of this section in accordance with procedures established by the Secretary and the Board, respectively, and published in the Federal Register.

(D) The Secretary and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in the certification application rules established under this section.

(E) The Secretary and the Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

(F) Within ninety days after the receipt of a properly filed certification application, the Secretary shall determine whether such class or model of vehicle is a low-emission vehicle, and within one hundred and eighty days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any such determination or decision, the Secretary and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board any dissenting views.

(e)(1) Certified low-emission vehicles shall be acquired by purchase by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

(2) In order to encourage innovative development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an innovative, inherently low-polluting propulsion system.

(3) Data relied upon by the Board and the Secretary in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

(f) The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible certified low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

(g) For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

(h) The Secretary shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Secretary shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

(i) There is authorized to be appropriated annually not to exceed $50,000,000 for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section.

(j) The Board shall promulgate the procedures required to implement this section within ninety days after the effective date of this section.

The PRESIDING OFFICER. The Senate will be in order. Who yields time?

Mr. MUSKIE. Mr. President, I yield myself 5 minutes.

This amendment has been offered by the distinguished Senator from Montana in behalf of the Senator from Washington (Mr. MAGNUSON). It is an amendment that I am prepared to take, but I should like to read this description of it which was prepared by the Senator from Washington (Mr. MAGNUSON).

As most of the Senate is aware, the Senator from Washington necessarily could not be present during the Senate's consideration of this bill because of an illness in his family. His statement is as follows:

STATEMENT BY SENATOR MAGNUSON

This amendment is designed to create a comprehensive Federal low-emission vehicle procurement program which would stimulate the development, production, and distribution of motor vehicles which emit few or no pollutants. The procurement program would stimulate low-emission vehicle production and distribution by creating immediately a guaranteed market which would pay certain fixed premiums for low-polluting vehicles and provide controlled conditions for field testing new concepts in automotive propulsion.

This amendment is substantially identical to my bill, S. 3072, which this body passed without a dissenting vote on March 26, 1970, but which the House has not acted upon. It would establish a Low-Emission Vehicle Certification Board composed of the Secretary of Transportation, Secretary of Health, Education, and Welfare, the Chairman of the Council on Environmental Quality, the Director of the National Highway Safety Bureau, the Administrator of General Services, and two Presidential designees. This Board would receive applications from developers of low-emission vehicles and determine if those vehicles were suitable substitutes for existing vehicles in use by agencies of the Federal Government.

To obtain certification for a vehicle, a developer would make application to the Certification Board in a manner prescribed by the Board. Upon receipt of this application the Board would ask the Secretary of Health, Education, and Welfare to determine whether the vehicle embodies a significant advance in pollution emission control technology. If the Secretary so finds, then the Board would determine whether or not the vehicle was suitable for use as a substitute for any class or model of vehicles then in use by the Federal agencies. In making such determinations the Board would consider such factors as the safety of the vehicle, its performance characteristics, its reliability, potential, its serviceability, its noise level, and its maintenance characteristics.

Any vehicle determined by the Secretary of Health, Education, and Welfare to be a low-emission vehicle and certified by the Board to be a suitable substitute is then eligible for purchase at a premium of 150 percent of the retail procurement cost of the least expensive class or model of comparable vehicles. At its discretion the Board may in-

crease that premium to 200 percent if the vehicle being purchased embodies an innovative propulsion system which is "inherently low-polluting"—one not depending upon some complicated add-on device to make it smogless.

To the extent that such low-emission vehicles are available, at prices within the premium ceiling, the Administrator of General Services is required to purchase them.

I urge my colleagues to again endorse this Federal procurement proposal. In the first place, this amendment will enable the automobile industry to begin at once to test new propulsion systems under controlled conditions to insure their satisfactory performance in the general consumer market by 1975 or 1976. Secondly, the premium payments will help defer some of the prototype development costs. Thirdly, the bill will make feasible independent innovative development of low-emission vehicles so that all paths to low-emission vehicle development can be explored and the 1975 legislative mandates can be met through the best technologies presently available to this Nation.

There is a final need for this legislation. The Federal Government, particularly as it places greater and greater demands on the private sector not to pollute, has a strong obligation not to disrupt the environment when conducting its own activities. Therefore, the reduction in pollution from governmental vehicles, even apart from the considerations previously mentioned, establish a need for this amendment—now.

The legislation represented by this amendment has already been enacted by the Senate once this year, Mr. President. I was privileged to be a cosponsor of it with the distinguished Senator from Washington. We held joint hearings—the Committee on Commerce and the Committee on Public Works. So I recommend that the Senate adopt the amendment.

Mr. BOGGS. I yield myself 1 minute.

Mr. President, in view of the statement offered by the manager of the bill, the Senator from Maine, and the fact that the Senate has previously acted on this matter, I have no objection to accepting the amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. GRIFFIN. It is the identical bill that was passed?

Mr. MUSKIE. Yes, it is. There are a few technical amendments, I might say.

Mr. President, I yield back the remainder of my time.

Mr. BOGGS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BOGGS. Mr. President, the distinguished senior Senator from California (Mr. MURPHY) who, up until this Congress, was a member of the Senate Public Works Subcommittee on Air and Water Pollution, and who has always been a strong advocate of legislation to fight pollution, is necessarily absent today. The Senator cosponsored the bill which is before us today, and he has prepared a statement in support of the measure.

Mr. President, I ask unanimous consent to have Senator MURPHY's statement printed in the RECORD.

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

SENATOR MURPHY STRONGLY SUPPORTS BILL DESIGNED TO ACHIEVE CLEAN AIR BY 1975

Mr. President, as a cosponsor, I strongly support S. 4358. This measure is tough, timely and desperately needed.

I want to congratulate Senator Muskie and the ranking Republican member, Senator Boggs, and the members of the Subcommittee and full Committee of the Public Works Committee for bringing this effective measure to the Senate Floor. Up until this Congress, I was a member of the Public Works Subcommittee on Air and Water Pollution. In this capacity I helped to shape and strongly supported all the air pollution legislation enacted since 1965. My interest in the problem since leaving the Committee has continued undiminished. I know of the careful and thorough manner with which the Committee considers legislation; I know of the cooperative and bipartisan spirit that operates in the Committee for the benefit of the nation. This has produced again a unanimous recommendation to the Senate on a bill for the benefit of the entire nation.

There was a time when smog was considered a unique type of scientific curiosity resulting from the unsual photochemical reactions which occurred in Los Angeles. I have had the pleasure of crossing this vast and great country many times in recent years. I have seen the pollution problem grow until, today, it is nationwide. Dr. John R. Goldsmith of the Cal. Department of Public Health has declared "there is no more clean air in the United States . . ."

In California, where the concern over the pollution problem is probably the greatest in the country, we have experienced a similar spread of pollution.

In San Gabriel and San Fernando Valleys, which neighbor Los Angeles, smog is frequently heavier than in Los Angeles itself.

Sacramento Valley which already has a smog problem, may face pollution greater than Los Angeles within the next decade or two according to a University of California agriculture engineer.

Fresno citizens 25 years ago were able to see the Sierra Nevada Mountains in the distance. Today these mountains can only be seen in the morning.

Smog in the Los Angeles basin has resulted in a slow decline of citrus groves south of the city and trees have been damaged in the San Bernardino National Forest 50 miles away.

No longer do we hear isolated voices of concern in California; the citizens of California are almost one voice crying out in rising crescendo against the attack on the state's beauty and against the impairment of the quality of life.

California has pioneered the nation's battle against pollution. The Los Angeles County Air Pollution District probably has the toughest air pollution laws in the country against pollution from stationary sources. California has also been the bellwether in the nation's battle against pollution from the automobile. I might say that I am pleased that the "Murphy Amendment" which was added to the Air Quality Act of 1967, after a difficult fight, is preserved and is found in Section 210(b) of this measure. This amendment grants to California the right to set automobile emission standards higher than the nation. California has taken advantage of the amendment and has enacted legislation at the state level giving California the strongest anti-pollution laws with respect to automobile emissions in the country. Notwithstanding, these strict controls, the automobile remains the principal polluter in California. This is a particular concern for California which already has more cars per capita than any other state.

In addition, California is adding to its present number at a rate faster than any other state. If present trends continue, it has been projected that 42 million Californians will be operating 23 million vehicles by the year 2000. These 23 million vehicles will consume 25 billion gallons of gas or three times the present consumption. We are running as fast as we can, but our efforts have only given us a "dangerous status quo."

Air pollution has an adverse affect on both man and his environment. Over 200 million tons of contaminates are emptied annually into America's skies. Pollution soils our clothes and our homes. It causes economic dangers to our agricultural products. As the number one agriculture state in the nation, this obviously is a major concern to California. A recently concluded eight-year study by the Air Resources Center at the University of California at Riverside showed smog was causing economic damage to citrus crops. The study found air pollution cutting the yield per tree by as much as half and reducing the cost value by $33 million. This same study found the greatest economic loss from smog to ornamental plants and shrubs of homeowners. This damage was estimated to be a staggering $125 to $144 million each year. Air pollution also limits visibility. The beauty of California is blurred. Air transportation is made more hazardous. For example, as a result of Los Angeles smog, visibility frequently is lower than three miles. The July, 1970, air pollution alert on the East Coast nearly obscured visibility in some areas.

While this damage to our eyes, our sensitivities, and our pocketbooks are important, the most important effect of air pollution is the danger it poses to the nation's health. There had been several disaster warnings about the air pollution crisis. These occurred in 1930 in Meuse Valley of Belgium, in Donora, Pennsylvania in 1948, in London in 1952 and again in 1962, and in New York in 1953, 1963 and 1966. The news reports on Japanese efforts to control air pollution, particularly in Tokyo, and the reports considered at international conferences in recent years on the subject of pollution show pollution to be a worldwide problem. According to a *Washington Post* article of July 27, 1970, the Japanese characterize their air pollution problem as exposing citizens to the greatest danger of their lives. There probably have been other crises in smaller, less conspicuous locations, where the conditions were not recognized for what they were or where the situation was not reported. The major air pollution disasters were important in that they presented dramatic evidence of the deleterious effects of air pollution.

Most health workers in the field of respiratory diseases now agree that air pollution is capable of producing serious health effects. Rene Dubos pointed out in his book, "Man, Medicine and Environment": "Chronic respiratory disease is now the leading cause of disability among adults in all the industrial ized parts of northern Europe and is becoming increasingly prevalent in the United States . . . Like chronic bronchitis, cancer, and many other types of pathological manifestations, the multifarious effects of environmental pollutants may not be detected until several decades after the initial exposure."

In *Hospital Practice*, May, 1970, John Goldsmith discusses community surveys in Los Angeles and Pasadena which show that air pollution has a significant effect in aggravating the condition of asthmatics. Other epidemiological studies report that relatively little air pollution aggravates chronic bronchitis. Controlled clinical studies in Los Angeles showed that patients with bronchitis or moderately advanced emphysema are seriously affected by Los Angeles type

smog. Goldsmith also states that the available evidence suggests that air pollution may actually be a causative agent in emphysema. Emphysema is now the fastest growing cause of death in the United States, doubling every five years since World War II.

Dr. John W. Jutila, a microbiologist at the Montana State University, is reported as saying that "Environmental microinsults accumulate to become life threatening to more and more individuals. Acceleration of the aging process and the onset of cancer are among the threats posed by a fouled environment." In an extensive review by Stephen Ayres and Meta Buehler in *Clinical Pharmacology and Therapeutics*, May–June, 1970, the authors summarize their results by saying: "An impressive body of scientific information points to the inescapable conclusion that the levels of pollutant contamination existing today in many American cities are sufficient to produce profound health consequences."

The first annual report of the Council of Environmental Quality states:

"It is well established that air pollution contributes to the incidents of such chronic diseases as emphysema, bronchitis and other respiratory ailments. Polluted air is also linked to higher mortality rates and other causes including cancer, arteriosclerotic heart disease."

The incidents of chronic disease has increased rapidly during the past century. Although it is difficult to determine the cause of chronic diseases, there is enough evidence to make one thing certain—air pollution is not doing any of us any good. So the direct proof of cause and effect relationship between air pollution and health still is and should be the subject of research and discussion in medical research. One is reminded of the controversy which still drags on about cause-effect relationships between smoking and cancer. Disagreements still continue and people are still suffering ill health. Although the evidence and statistics I have cited are convincing and point out the urgency for new and tough action, I believe the report which was carried in *Today's Health* for this month which included the following quotation even more cogently depicts the need for action:

"Just recently there was an article in the newspaper about grade school children in the area south of Chicago's loop drawing pictures in art classes. In the last three years the sun no longer appears. Before, there was always a bright smiling sun in the sky. No longer. The sun is gone. There is no sun in the pictures now. Children in the schools now accept this, and it's very, very frightening. They accept pollution as a natural part of their environment. 'What ever happened to clean air?'"

I am not willing to accept pollution as a natural part of my environment. I want to help put the "sun" back into the pictures of those grade school children in Chicago. I support this measure and consider the elimination of air pollution as one of the nation's priority problems not only in terms of the obvious and immediate benefits in the form of improved health, but also in terms of indirect benefits which will accrue through improved plant growth and the aesthetic benefits associated with our environment.

I am under no illusions that the cleaning up to America's air will be cheap, but in considering the cost, we must also consider the cost of inaction. Recent articles point both costs out. The *U.S. News and World Report* in its August 17 issue estimated the cost to be over $13 billion over the next five years. However, this same report describes damages from polluted air to be over $65 billion over the same period, and this does not include damage to health.

Lester B. Lave and Eugene P. Seskin pointed out in their recent analysis of the cost effects of air pollution on human health in *Science*, August 21, 1970:

"The evidence is extremely good for some diseases (such as bronchitis and lung cancer) and only suggestive for others (such as cardiovascular diseases and non-respiratory tract cancers) . . . We therefore make the assumption that there would be a 25 to 50 per cent reduction in morbidity and mortality due to bronchitis if air pollution in the major urban areas were abated by about 50 per cent . . . Approximately 25 per cent of mortality from lung cancer can be saved by a 50 per cent reduction in air pollution . . . It seems likely that 25 per cent of all morbidity and mortality due to respiratory disease could be saved by a 50 per cent abatement in air pollution levels . . . There is evidence that over 20 per cent of cardiovascular mortality could be saved if air pollution were reduced by 50 per cent . . . We have estimates that 15 per cent of the cost of cancer would be saved by a 50 per cent reduction in air pollution . . . We estimate the total annual cost that would be saved by a 50 per cent reduction in air pollution levels in major urban areas, in terms of decreased morbidity and mortality, to be $2080 million . . . Psychological and aesthetic effect of air pollution on vegetation, cleanliness, and the deterioration of materials have not been included in these estimates."

Mr. President, the bill before the Senate today builds on the experience and lessons gained under the present air pollution legislation, as well as the mounting and increased awareness of health dangers associated with the pollution problem. As the committee report observes, the problem of air pollution "is more severe, more persuasive, and growing at a more rapid rate than was generally believed."

I would like to discuss some of the features of the bill that is before the Senate today.

(1) The bill provides that by model year 1975 an almost pollution-free automobile must be achieved. 1975 cars must at a minimum reduce pollution by at least ninety per cent from the 1970 standards. While industry has expressed concern that they will not be able to meet these standards, the health and safety of our people requires that they do so and I feel they can. They have risen to similar challenges in the past and have met standards set in California, which initially they felt could not be met. Industry must do so again. Motor vehicles account for 42 per cent of the five major pollutants in the nation. In California, the car is our principal pollution problem. Pollution equipment under the bill would be required to have a fifty-thousand mile warranty. The bill continues the federal preemption of emission standard setting authority for automobiles, which means this states are not permitted to establish their own standards. The "Murphy Amendment," however, added to the 1967 Air Quality Act is preserved intact. Thus, California will continue to be able to establish standards more stringent than the federal standards. The Secretary of Health, Education, and Welfare is also authorized to certify used car control devices.

(2) The bill provides for regulations of fuels and additives.

(3) The bill establishes national ambient air quality standards with specific timetables that must be met. This provision would help to guarantee for all of our citizens cleaner air in the future.

(4) The bill establishes air quality goals.

(5) The bill requires that new industry built in the nation must achieve standards of performance based on the latest available control technology.

(6) The legislation prohibits any emission of pollution deemed extremely hazardous to health.

(7) The bill authorizes national emission standards for selected pollutants. This provides authority to control pollution not covered by the ambient air standards or by hazardous substance emission controls.

(8) The bill requires federal facilities to clean up. I have felt for some time that the federal government should set an example for the nation. Yet, I have discovered that the federal government often not only is not a model, but actually is a major polluter in some areas. This has to stop. President Nixon has issued an executive order requiring federal facilities to clean up, and these steps are overdue and indeed welcome.

(9) The bill authorizes increased research relating to fuels and vehicles.

(10) The bill authorizes research concerning the health effects of air pollution. Recently the Senate adopted a Smith-Murphy amendment to the Regional Medical bill, calling for a report by the Secretary of Health, Education, and Welfare on the health consequences of pollution. Certainly, we need to know more about this aspect of the problem.

(11) The bill authorizes the Secretary of Health, Education, and Welfare to abate any pollution that presents an imminent and substantial danger to health.

(12) The bill prohibits the federal government from entering contracts with any company under an abatement order or found to have knowingly violated air quality laws.

(13) The bill provides for necessary penalties and controls to make certain that the standards, goals, and intent of the bill is carried out.

(14) The bill establishes an Office of Noise Abatement and Control in the Department of Health, Education and Welfare. Although it is clearly understood that if the Environmental Protection Agency as proposed by the President is established, this noise pollution function would also be transferred.

Earlier I predicted that the 70's would become known as the Decade of Environment. It is not coming any too soon. The President, as his first official act of 1970 signed into law the National Environmental Policy Act of 1970, establishing a three-member White House Council on Environmental Quality. In April, S. 7, the Water Quality Improvement Act, which I cosponsored was enacted. In addition, the President has proposed the creation of a new environmental Protection Agency to coordinate, centralize and accelerate the Nation's pollution fight. This was particularly pleasing to me because I had earlier cosponsored with Senator Scott S. 3388, a bill proposing a similar national agency. I have written the President urging that this agency be located in California. I ask unanimous consent that my press release on this subject be included into my remarks. The Senate on September 1, passed the Environmental Quality Education Act which I supported to establish education programs to encourage and enhance environmental quality. The bill the Senate is considering today will probably rank as the most significant anti-pollution legislation passed by the Congress.

So, Mr. President, the air pollution problem is far more today than a scientific curiosity or a favorite topic for jokes. It is a national disgrace and a menace to the health and welfare of our people. We have already reached that point in our lives when vast national regions are being affected by enormous contaminated air masses. In 1966 I warned the Senate Subcommittee on Air and Water Pollution that "time is running out." I said: "In my judgment the pollution problem is one of the most serious domestic problems facing our country today. While serious, it is not yet critical. The time is not on our side. It is running out. The delay will not only be costly in terms of dollars, but even more important, will be the possible detriment to human health and the interference with the general well-being of our society."

Mr. President, time now has run out. It is, as President Nixon has declared, "now or never" in our battle against pollution. We have reached that point and that time in our history when we must call a halt to the fouling of our environment. We must pro-

vide our citizens with the quality of air that they rightly demand and deserve. S. 4358 should do the job.

The PRESIDING OFFICER. Who yields time? The bill is open to further amendment.

AMENDMENT NO. 930

Mr. COOPER. Mr. President, I call up my amendment No. 930.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. COOPER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 63, beginning on line 23, strike out all through line 4 on page 64, and insert in lieu thereof the following: "and shall be so warranted for the lifetime of such vehicle or engine. Fifty thousand miles shall be taken as the basis for the lifetime of a vehicle or engine under this section. As a condition to the obligation of manufacturers to correct defects in deisgn, manufacture, or assembly, manufacturers may require the ultimate purchaser and subsequent purchasers of such vehicle or engines".

On page 64, line 12, strike out the words "adjustment, operation".

Mr. COOPER. Mr. President, amendment No. 930 is an amendment proposed by myself and Mr. BAKER and Mr. GURNEY. It arose out of the discussion in the committee, and I shall explain briefly its purpose. I am not going to ask for a vote, but I do think some record of the issues shoud go into this debate.

The bill provides for a comprehensive warranty by the manufacturer running in favor of any purchaser or subsequent purchaser. The warranty, as I see it, is a warranty that the design and the manufacture of the system and parts in the car which were designed to control pollutants will be effective in favor of any initial purchaser or subsequent purchaser. In addition there is language in the bill which extends the warranty to include "performance". It would seem to me that such warranty would not only guarantee the design and equipment of the car itself but also would guarantee operation by the owner of every car, in effect, perhaps a hundred million car owners in this country.

I must say, however, that in the discussion, the Senator from Maine answered such issues quite persuasively. Inasmuch as I am not an automobile engineer or technician in any way, I can just say that I would not be in a position to rebut those arguments without more information and without more help from other members of the committee who understand engineering.

I think there is a problem with this section, and I have only raised it as an issue but I do not think it should be determined on the floor of the Senate. I do not know whether the problem is as great as I thought it was in the first instance. I bring it up so that in conference we could have a full discussion.

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

Mr. COOPER. I yield.

Mr. GRIFFIN. I agree with the Senator that there are serious problems in regard to the warranty provisions.

Page 82 of the bill, section 215, provides that warranty provisions shall be effective 90 days after the enactment of this section.

Keep in mind that testing procedure to determine in the field whether or not the extent to which an automobile exhaust is polluting the air have not yet been developed. Keep in mind that it has been admitted on the floor of the Senate over and over again that the technology to make it possible to comply with the standards written into this bill is not in existence today. The hope is that it will be developed. But the warranty goes into effect 90 days after the bill is enacted.

I wonder whether the Senator from Maine could explain how it is that a warranty would go into effect 90 days after enactment in this particular situation.

Mr. MUSKIE. I say to the Senator that since the emission standards were set by the Secretary under the 1965 law, automobiles presumably should have been meeting the standards. The fact is that they have not.

For example, according to testimony of the National Air Pollution Control Administration—I read from the report:

The more complete data confirmed that slightly more than one-half of the cars tested failed to meet either the hydrocarbon or the carbon monoxide standard. For one model, more than 80 percent of the cars tested failed one or more tests. Due to the small number of cars, these emission data were not extrapolated to 50,000 miles. However, on the basis of the California data, one would expect that the emissions would tend to increase to some extent with increased mileage accumulation.

So the record is that, although the industry has been able to get certification of the new cars and has sold them—and has sold them under the assurance that they were meeting the standards—the fact is that the cars are not meeting the standards.

So what we are concerned about is not only the tests or the standards that the cars meet while they are in the factory, but also whether or not they continue to meet these standards afterward. We are asking the consumers of America to pay an extra cost, which undoubtedly will be imposed upon these cars, for cleaner cars. The only way we can assure them that they are getting what they are paying for is to impose upon the manufacturer a responsibility and an obligation to build into these cars a durability quality that will permit the cars to meet the performance standards required.

We think that the warranty is essential. The used car population of this country now numbers more than 100 million and is increasing at the rate of a million and a half, discounting those taken off the road. If we are to clean up the used car population of this country, we have to require that new cars meet not only the standards on the production line but also the standards in performance. Unless they do, the whole exercise is useless, so far as I am concerned.

Mr. GRIFFIN. Of course, the goals and objectives are very desirable; I'm sure we are all for them.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. I yield myself time on the bill.

The question is, How realistic and how practical is the proposed legislation? Until now, warranties that have been required, as I understand it, have related to workmanship and material in the automobile as it came off the assembly line. Now, under this bill, we would extend the warranty far beyond that. We would say that not only does the material and workmanship have to meet certain standards when it comes off the assembly line—but also, that, it must still perform in accordance with those standards 50,000 miles later.

Now, the fact is that testing procedures with regard to exhaust emission to establish whether a car, in the field, 10,000 miles later, or 50,000 miles later, is still performing are not available. Is that not correct, I would ask the Senator from Maine?

Mr. MUSKIE. May I say to the Senator that in the bill as presented to the committee, we had a provision that the warranty should not be required until the Secretary was satisfied that the testing procedures were available. It was at the request of the industry that that was changed to 90 days after enactment. I suggested a few moments ago to the Senator that I would be happy to revert to the committe language if that would meet his problem, but he was not interested. We are interested in relating the warranty and its application to the availability of the appropriate testing procedures.

May I say another thing to the Senator, and this is from the testimony of Mr. Williams of the Automobile Manufacturers Association, in 1965, where he suggested that national standards be tested against the criteria one of them being, that (c)—

Control of emissions by establishment of performance standards rather than design standards.

The industry itself emphasized from the beginning, until they were faced with this deadline, that performance should be the test and that it should be geared to the requirements of ambient air. That has been their case since 1967 and before.

Now that we take them up on that, they inject other arguments, that we should not insist upon performance standards, which they cannot guarantee, but that we should go only to the design standards, that the warranty should not be related to performance but to design.

The story is different, now that we take them up on the guidelines they laid down in 1967, which we have been trying to follow.

Mr. GRIFFIN. Mr. President, the goals and objectives of this legislation are fine. But I do not think that the bill before the Senate is very realistic. I agree with the Senator from Kentucky, I do not believe that we can rewrite this

measure on the Senate floor. I would offer an amendment, but it is almost impossible to rewrite the bill in such manner. I hope this exchange has demonstrated that there are real problems in the bill, and I hope this will not be lost upon the conferees representing the Senate.

Mr. MUSKIE. Mr. President, I ask unanimous consent to have printed in the RECORD the language of the committee report dealing with this question of the warranty.

There being no objection, the excerpt from the report, ordered to be printed in the RECORD, follows:

SECTION 207. VEHICLE AND VEHICLE ENGINE COMPLIANCE TESTING

Section 207 would represent a significant departure from prior provisions for control of vehicle emissions. At the present time compliance with national emission standards for vehicles and engines is determined on the basis of whether the average of a class or model complies with the standard. Section 206 continues this procedure. Under section 206 prototype models would be certified as to compliance with standards and production-line sample-testing would be authorized to assure that the average of the models coming off the production line conforms to preproduction certification.

Under section 207, each production line vehicle would be required to comply with applicable emission standards. Each vehicle would be required to comply with standards for a 50,000-mile lifetime. The manufacturer would be required to warranty the performance of each individual vehicle as to compliance with emission standards. The dealer would not carry any obligation under this provision.

This section would provide two methods to determine whether or not individual cars will perform to the emission standard. First, the Secretary would be provided with the authority to test representative samples of vehicles on the road and, if he found that a representative sample of a model or class fails to continue to comply with the standards within the 50,000-mile period, he could require the manufacturers to recall that model or class for the purpose of correcting any nonconformity.

The second compliance testing method would be triggered by the development of a quick test procedure. The Secretary would be required to develop a test which could be quickly and uniformly applied to individual vehicles on the production line and on the road to determine whether or not those vehicles comply or continue to comply with the standards for which they were certified. The quick test would have to be correlated with the precertification test procedure. It would have to be a test which could be applied in a reasonable period of time related to the normal time for a regular vehicle inspection. A quick test should avoid unnecessary slowdown of production lines, unnecessary consumer inconvenience, while providing a method to determine whether individual vehicles on the road are continuing to meet the standards for which they were certified.

The need to assure individual vehicle compliance became evident after sample-testing of vehicles on the road (both from California and nationally) revealed deterioration from conformance with the standard.

According to testimony of the National Air Pollution Control Administration:

"The more complete data confirm that slightly more than one-half of the cars tested failed to meet either the hydrocarbon or the carbon monoxide standard. For one model, more than 80 percent of the cars tested failed one or more tests. Due to the small number of cars, these emission data were not extrapolated to 50,000 miles; however, on the basis of the California data one would expect that the emissions would tend to increase to some extent with increased mileage accumulations."

This bill would require the American people to make a substantially greater investment in motor vehicles to assure that air quality standards are implemented. This investment would be defensible only if the emission control systems continued to conform to standards for the lifetime of the vehicle. Substantial deterioration from the emission standard would mean that the manufacturer was not designing emission control systems which meet the intent of this legislation. It would mean that air quality standards in regions throughout the Nation would not be effectively maintained, and it would mean that potentially billions of dollars of consumer investment would be to no purpose.

The Committee has no reason to believe that emission controls would be inexpensive. The automobile industry has indicated that achievement of the 1975 standards set by the bill would be costly—whether such standards were achieved through cleaning up the internal combustion engine or through development of an alternative power source.

The manufacturers informed the Committee that they would not be able to guarantee conformity with emission standards for the anticipated 10-year life of a vehicle. The committee bill provides that 50,000 miles would be the maximum that a vehicle would be required to conform to the standards for which it was certified. The Committee bill would provide that a manufacturer may require reasonable evidence of proper maintenance of a vehicle and must provide written instructions on maintenance, adjustments, service and operation. The Committee hopes that, if the motorist complied with these instructions, emission controls would not deteriorate after 50,000 miles to the extent that ambient air quality would be impaired. The Committee further expects the manufacturer to endeavor to either improve the quality control of emission systems or explore better ways to assure continued compliance beyond 50,000 miles of use.

The warranty required by this section would not become effective until 90 days after enactment of this Act. This delay would be needed so that the manufacturer could prepare instructions for the motor vehicle purchaser. The Committee expects these instructions to be reasonable and uncomplicated. They would have to be approved by the Secretary. During such time as the warranty provision is effective, vehicles manufactured after that date would be required to comply with present standards. Vehicles manufactured in future years would have to be warranted to comply with such standards as may be applicable.

The Committee intends that the public should be made aware of the actual cost, not the manufacturer's price of any air pollution control equipment and warranty. While the Committee recognizes that separation of specific costs for air pollution control may be difficult, it is quite likely there would be a marked increase in cars in 1975. To the extent that such costs are attributed to the control of air pollution emissions the Committee intends that those increases be the actual cost of the air pollution systems involved.

The Committee also recognizes the difficulty in any recall provision of notifying the owners of vehicles. The burden would be placed on the manufacturer to notify both the initial and subsequent purchasers of vehicles. The Committee expects that the manufacturer would not only depend on the files of the franchise dealer, but would, to the extent practicable, use State motor vehicle department registration files to obtain the names and addresses of subsequent purchasers of cars. By establishing a 50,000 mile, no year lifetime for the purpose of warranty, the Committee did not intend to relieve the automobile manufacturers of their responsibility to notify owners of older cars. The 50,000-mile period can be assumed to be 4 to 5 years and the manufacturer should be expected to notify any owner of a vehicle that is five years old or less as to failure to continue to perform to the standard. A decision not to require the manufacturer to repair the vehicle could be made after notice and after finding that the vehicle had exceeded the 50,000-mile warranty period.

Mr. MUSKIE. Mr. President, let me make clear precisely what it provides. It provides that there shall be a manufacturer's warranty of performance for 50,000 miles.

Throughout discussions with the industry over the past 6 or 7 years, that is what they were stating, 50,000 miles. They do not consider that technology would be effective or worthwhile, in terms of cost to the consumer, unless it meets the 50,000-mile test. So we are asking for that, because unless automobiles will perform for a practical proportion of their life, meeting standards initially may not be worthwhile. Fifty thousand miles is not all their life, 100,000 miles being nearer to a measure of the life of a motor vehicle, but we have taken 50,000 miles, comparable to the 50,000-mile guarantee some companies gave us a few years ago on the drive train and the lubrication question, and we have used that 50,000-mile test on performance.

We understand, of course, that performance depends at present as well upon the extent to which the operator maintains his car. We have said in the report, and made it clear in the language of the bill, indeed, that unless the individual operator meets the manufacturer's instructions with respect to maintaining the car as it relates to the clean air provisions of the automobile, the warranty will not be available to the owner. That is the language of the bill. It was written into the bill, on page 64.

May I read it?

As a condition to the obligation of manufacturers to correct deficient performance, manufacturers may require the ultimate purchaser and subsequent purchasers of such vehicles or engines (a) to provide reasonable evidence of the time when such vehicles or engines were first placed in regular service and (b) to provide reasonable evidence that prescribed maintenance, adjustment, and service requirements and schedules have been observed. The manufacturer shall furnish with each vehicle or engine written instructions for the proper maintenance, adjustment, operation, and service by the owner or operator.

In addition, Mr. President, the bill provides grant-in-aid programs to States and communities to develop inspection programs and services comparable to the safety inspection services programs, that enable both operator and manufacturer to stay on top of the maintenance problem. That is the key. The industry has recognized that, from the time of its 1967 testimony and before. We have merely responded to that concern of theirs.

We understand that it is not presently possible to build a maintenance-

proof, clean car, but that it is possible—with the use of a system that is built with some durability in it and some responsibility imposed upon the operator—to assure reasonably clean operation of such an automobile. We have to have the two. One without the other is like a one-legged man.

Mr. ALLOTT. Mr. President, will the Senator from Maine yield me some time?

Mr. MUSKIE. I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER (Mr. PACKWOOD). The Senator from Colorado is recognized for 5 minutes.

Mr. ALLOTT. Mr. President, I think we are all trying to get at the same thing, but on this subject, which I had not intended to speak on, that the Senator from Maine was discussing, it raises some questions in my mind.

First, where is an operator going to get the maintenance necessary to keep his car operating at the supposed level as when he purchased it?

My experience with various cars, and I am sure it is no different from anyone else's in the Senate, is that, to secure competent maintenance on a car at the present time in any respect is almost an impossibility. In fact, even for rather simple operations, it is nothing unusual to have to take back the car two or three times.

So, that is a weak spot in the bill. Whether we can do anything about it, I do not know, but it certainly is a weak spot in the bill.

We are assuming that the automobile manufacturers are able to develop the kind of emission controls as contemplated in the bill either by 1975 or 1976. Yet, we still would have another problem.

For example, if I am delivered a car in Washington, D.C., which contains the so-called proper emission controls, and it is in working condition and performance and up to the standards which have been set, and I drive that car to Denver, Colo., that car will no longer meet those qualifications which held in Washington, D.C.

On the other hand, when I reach Denver, if I am fortunate enough to find a garage in which I can get the emission controls on the car corrected so that they meet the standards when the car was delivered to me, I still have a problem when I leave and drive to, say, Vail or Dillon, and I cross two mountain passes, one of which is a few thousand feet, under 12,000 feet, and the other is in excess of 11,000 feet, the car will not meet the emission standards there. Therefore, under the provisions of the bill, I am contributing to a violation of the bill and its purposes. Because one simply cannot create an emission control which will be workable at sea level, at 5,000 feet, at 11,000 feet, or at 12,000 feet or, again, at 8,500 feet.

I do not know whether this means that, as an operator I would have to—and this would affect a lot of people in my State—have my car taken to a garage at each change of altitude, but there are factors like this—although I have not gone extensively into consideration of the bill—which have to be considered. As I say, the first thing which concerns me is the ability of an operator of a vehicle to get it adequately cared for and the second thing is the change in climatic conditions. The car is affected by climatic conditions and not just by altitude. The change in emission in any particular application of a car is caused by a change in climate and a change in altitude.

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

Mr. ALLOTT. I yield.

Mr. GRIFFIN. Mr. President, I want to clear up something I said earlier. At one point I believe I indicated that are no testing procedures available at the present time. That was an error. It is possible to test the exhaust of a car now. But I am told that it takes $50,000 worth of equipment, several highly trained technicians, and 13 hours of time for each test of each car.

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

Mr. GRIFFIN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. GRIFFIN. Mr. President, I am referring to the kind of a test that would be necessary to determine the performance level after 10,000 or 50,000 miles.

Mr. ALLOTT. That is on an individual car.

Mr. GRIFFIN. That is on one individual car. Now, what is lacking and needed is a quicker, more convenient, and cheaper way of testing.

Although the bill itself does not say anything about this, the committee report contemplates that the Secretary of Health, Education, and Welfare, hopefully, will develop some quick testing procedure—a procedure not available at the present time. In the meantime, there are no practical testing procedures.

There is no indication in the bill as to who would pay the cost, how it is to be paid, or who would provide the equipment. However, the warranty provision goes into effect, nevertheless, 90 days after enactment of the bill.

Mr. ALLOTT. The Senator is correct. However, it is the Senator from Michigan and I, the users, who are going to pay for the testing and for whatever controls are put on the car. There can be no question about this. That is true of the American people in this whole area of environment, ecology control, and so forth.

There is no use in kidding ourselves. The American people will be spending a lot more for a lot of products in order to have the industries meet the standards that Congress is promulgating now. I think they are proper. I think we are proceeding in the right direction. However, it is John Q. Public who pays and who will pay for the testing and for the maintenance and all the rest of it.

Mr. MUSKIE. Mr. President, in response to the point made by the distinguished Senator from Michigan, the committee has long been aware of the need for a quickie test, so-called. This is why we geared the warranty provision to such time as the Secretary is satisfied such a test exists. The 90-day provision that is in here now, and that might be in effect imposing the requirement on the industry before such a test is developed, is at the insistence of the industry.

I repeat that the bill proposed by the committee would have been geared to the establishment of a quickie test.

I have no objection to modifying the bill to return it to what it was. I assume that the industry had some reason for insisting upon the 90-day provision.

With respect to the points made by the Senator from Colorado, he says that the points he made reflect the weakness of the bill. I take issue with that statement. The weaknesses that are reflected are endemic in the industry and the internal combustion engine.

The industry itself has recognized this over the years. And it has constantly striven to make the automobile maintenance-proof. It has undertaken to stretch out the life of the lubrication system, to reduce the number of times or the frequency of lubrication, and so on.

The industry recognizes that the American motorist is not a good maintenance engineer. Therefore the industry has worked to make the car maintenance proof.

I think the greatest problem the industry faces is the shortage of mechanics across this country. As a matter of fact, if there were sufficient mechanics and if each owner followed the particular maintenance schedules of the automobiles, without any new technology or new devices, they would be substantially cleaner vehicles. I do not know the extent to which they might be cleaned up, but I suspect that 50 percent might not be a bad target at which to shoot. That is because of maintenance problems.

We cannot by legislation remake the automobile industry. We brought pressure on the industry from the beginning, 7 years ago, to press with urgency, not merely for control of the internal combustion engine, but for the electric automobile, the external combustion engine, and other ideas that might develop in order to get away from the problem of the internal combustion engines. That is because the internal combustion engine has greater maintenance problems than the electric or the external combustion engine would if it were developed.

The industry likes the internal combustion engine. It likes the comfort and the conveniences it has built into it.

The pending bill does not say to the industry. "You have to stick with this." It does not say that Congress is committed to the internal combustion engine.

We cannot solve the problem of whatever technology the industry chooses to put its bets on. All we can do is to set the standards.

The automobile industry has created all of the problems from the top to the bottom. The corner service station is related to the fact that Detroit built an automobile with an internal combustion system.

The dealer on Main Street is a product of the manufacturer in Detroit. He gets his franchise from them. He gets the manufacturer's requirements as to what kind of building he should construct, what kind of service he should provide.

The key to controlling the situation is in Detroit. As a matter of fact, the Senator from Tennessee (Mr. BAKER) has persisted in making the point that it is not for us to say how these things should be done, but rather what performance standards are to be met.

So, if the bill is weak in not providing for the solution of the maintenance problem, I would welcome an amendment that would cure that weakness. But I do not think there is any way of writing a law that will create maintenance capability all across the country. Only the automobile industry can do that.

Mr. ALLOTT. Mr. President, I would have to take exception to the statement about the automobile industry, because I think the internal combustion engine has resulted in great efficiency. The torque, the r.p.m., speed of pickup, all of those factors are things that the American people have demanded.

Mr. MUSKIE. Mr. President, they have demanded it because of the automobile industry's advertising. There is plenty of testimony to the effect that we do not need power built into the automobiles. The appetite for the power has been stimulated by advertising.

The Senator knows that if the industry had chosen to put its muscle behind low power cars, lighter cars, cheaper cars, emission-free cars, it could have sold them. Does the Senator from Colorado doubt that?

Mr. ALLOTT. I think only within limits could they have done that. My feeling is that what the automobile industry has done is to meet the demand of the public. I admit, they have advertised and promoted the product just as one would promote suds or some other kind of detergent. This is part of the American way of life.

Mr. MUSKIE. Mr. President, I can recall driving an automobile back in the mid-thirties——

Mr. ALLOTT. Mr. President, I will get the floor later if the Senator wants it.

Mr. MUSKIE. I thought the Senator had yielded the floor. I had gotten the floor and was speaking and the Senator from Colorado interrupted to ask me a question.

Mr. ALLOTT. The Senator yielded to me. It is all right.

Mr. MUSKIE. Mr. President, I can recall driving my first automobile. It had 100 horsepower. I cannot recall demanding 200. I cannot recall even thinking about it until the industry put it in my mind.

Mr. President, now I insist on something at least that powerful or more. The idea did not originate with me, but with the industry. I must say I enjoy it.

I say to the Senator that this bill is not directed only to the automobile industry. This bill is going to require that the American motorist change his habits, his tastes, and his driving appetites. Of course, he has to, if we are to revert to a lighter car and a lower powered car. Those two factors, without any technology, could drastically reduce emission. The consumer also must make sacrifices in addition to those made by the manufacturer. So it is rather pointless to argue about whether the appetite rose in industry advertising or within the minds of consumers. The fact is both must now modify their concept of what tomorrow's automobile should be.

Mr. GRIFFIN. Mr. President, I yield 5 minutes on the bill to the Senator from Colorado.

The PRESIDING OFFICER (Mr. BAYH). The Senator from Colorado is recognized.

Mr. ALLOTT. Mr. President, I want to say in response to what has been said here that I am sorry there really is only one authority on automobiles on the floor although apparently there are others who have driven a little bit.

Mr. MUSKIE. Would the Senator identify the authority?

Mr. ALLOTT. Would the Senator repeat his question?

Mr. MUSKIE. Would the Senator identify that exclusive authority? I had not recognized it.

Mr. ALLOTT. I have been listening to him for a little bit here.

Mr. President, I am frank to say, to get back to this matter, we will have several problems and one will be with maintenance. I think if it were possible today to check the personal car of each Senator, I would doubt very much if any is operated within 75 percent of its specifications. It is impossible to get repairs to get them to operate at much more than that—maybe 80 percent, and I am being kind at that. That is the point I make.

In the operation of this particular matter one cannot apply the same standards to an automobile here and an automobile that is driven to Denver or over into the mountains, and have that car meet the standards that it did when it was originally made and delivered, even if it were 100 percent. No one can deny that. No automotive engineer that I know of anywhere in the country will deny it.

Second, I do think that we have to think not only in terms of what is going to happen to our engines when we have to drive them across the country, but we have to think of maintaining them. These are the two points I make. Nothing I have heard convinces me otherwise, and I am susceptible to being convinced. I would like to hear if there are answers to those points.

But what are we going to do with people who have the kind of country we have in Colorado where one goes from 3,000 feet in some parts of our State to 12,000 feet, and 12,000 feet is nothing unusual in our State; and then, the car will have to be adjusted every 5 miles as it goes up 1,000 feet. These are the problems we face.

I do not say the bill is wrong for that reason, but there are problems we have to face and it does not do any good to say the automobile industry inflicted this on us.

Mr. HART. Mr. President, may I have 3 minutes?

Mr. MUSKIE. I yield 3 minutes to the Senator from Michigan.

Mr. HART. Mr. President, getting back to the testing requirements, my able colleague from Michigan raised a point I thought was completely valid; namely, that the obligation becomes effective 90 days after enactment but there is not available presently the means within reason to make the tests.

I was surprised to hear from the able Senator from Maine that originally he had shared that concern, but the committee had changed the language at the specific request of the automobile manufacturers.

None of us claims infallibility about anything, but I wonder if Detroit, given the opportunity for second thoughts on this, would not agree with my colleague from Michigan, that the original position of the committee would be much more desirable. Under the original language the obligation would not become applicable until 90 days after there was available reasonably the means for a test. The Secretary would be obliged to make an executive finding, that such a test existed before the obligation would arise.

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

Mr. HART. I yield.

Mr. GRIFFIN. I do not know. I take the Senator from Maine at his word. I do not know what the position of the industry was before his committee. I find it inconceivable that they would ask for a warranty to go into effect 90 days after enactment if there was a provision in the bill that said it would not go into effect until a certain testing procedure was developed; and we have no idea at the present time how long it will take to develop.

Mr. HART. I find in the committee report language to suggest it was indeed the committee's original intention and, for some reason, apparently at Detroit's request they put in the requirement that it go into effect 90 days after enactment. We find in the report on page 29, fourth paragraph, this language:

> The second compliance testing method would be triggered by the development of a quick test procedure. The Secretary would be required to develop a test which could be quickly and uniformly applied to individual vehicles on the production line and on the road to determine whether or not those vehicles comply or continue to comply with the standards for which they were certified.

Mr. GRIFFIN. If I may pursue this further, when we talk about the Secretary developing quick tests, I wonder if anybody, including the Senator from Maine, has any idea how much it will cost to make quick tests available all over the country and how long it will take.

Mr. MUSKIE. If we knew we would not need to give the Secretary discretion, would we?

Mr. HART. But we have not given him discretion in the bill as reported.

I feel it would be preferable to state something on the order of:

> Within 90 days after the Secretary establishes methods and procedures for the tests required that this obligation be established.

I cannot understand why that is not in the interest of the manufacturers and all dependent on the industry.

Mr. MUSKIE. I find that language completely acceptable. I agree it is asking a great deal to impose a warranty

before we have a test to measure whether or not the warranty is being violated.

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

Mr. MUSKIE. I yield myself another 5 minutes.

The PRESIDING OFFICER. The Senator from Maine is recognized for another 5 minutes.

Mr. MUSKIE. I would be perfectly agreeable. May I suggest that here are three Senators discussing this matter. Why do we not decide what should be in the bill and recommend it to the Senate? We seem to be in agreement. I am for it and the two Senators are for it.

I suggest we offer the amendment to the bill and let the Senate act on it.

Mr. GRIFFIN. I would support the amendment. It is a small step in the right direction, but it points out how ridiculous this portion of the legislation is.

Mr. MUSKIE. Mr. President, if the Senator will yield, as compared to what the committee had in the bill, if it has become ridiculous because of this provision, the source of the ridiculousness is not the committee.

Mr. GRIFFIN. Mr. President, I yield myself 5 minutes.

It is ridiculous to say a warranty shall be effective 90 days after enactment when there is no testing procedure available. It would also be ridiculous to say the warranty provision would be effective 90 days after the Secretary develops a quick test, whatever that is, when we have no idea if this quick test can be made available throughout the country in 90 days, how much it would cost, or what would be involved. It is legislating in the dark, and it is ridiculous.

Mr. HART. Mr. President, let us take the small step, anyhow.

I would offer as an amendment the addition of this language beginning on page 63, at line 19, striking nothing, but inserting prior to the language appearing on line 19:

Within 90 days after the Secretary shall have established feasible methods and procedures for making tests as required by subsection (b)—

And, as a necessary conforming amendment, I am advised that a change on page 82, line 10, would be required; namely, deleting the reference to "207 (c)".

I would inquire of the manager of the bill——

The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that an amendment is pending.

Mr. COOPER. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. COOPER. I am withdrawing my amendment to amend section 207. I think the discussion that insued following my calling it up indicates some of the problems that we had in the committee. Since I am no engineer—in fact, since 1936, I have not owned a car, nor have I driven a car in 20 years—I think there are problems in the warranty amendment. However, trying to separate the warranty as between a construction and design warranty from a warranty which would extend to performance of automobiles driven by 100 million drivers is extremely difficult.

There are provisions in the bill which seem to put pressure on the manufacturers to produce a design which will last 50,000 miles or the life of the car. These include certification by the Secretary; second, a provision that it will require testing on the production line; third, a provision that the Secretary can test it at any time; fourth, that the Secretary can order recall of any number of cars from any number of owners; and finally, penalties of up to $10,000 if a car is put in commerce which will not meet these standards.

So it seems to me there was a question as to whether there should be a performance warranty. As I have said, my knowledge is not sufficient to comprehend it. With other problems of the committee, we may not have gone into it as fully as we could. I wanted to raise the matter because I think it is proper that we have some further discussion of it in conference; but I withdraw the amendment.

The PRESIDING OFFICER. The amendment of the Senator from Kentucky is withdrawn.

Mr. HART. Mr. President, I offer an amendment providing that the following language be inserted on line 19, page 63:

Within 90 days after the Secretary shall have established feasible methods and procedures for making tests as required by subsection (b)—

The PRESIDING OFFICER. Will the Senator send his amendment to the desk?

Mr. HART. Mr. President, this amendment is offered by my colleague from Michigan (Mr. GRIFFIN) and myself.

The PRESIDING OFFICER. The amendments offered by the Senator from Michigan will be stated.

The legislative clerk read the amendments, as follows:

On page 63, line 19, after "(c)", insert "Within 90 days after the Secretary shall have established feasible methods and procedures for making tests as required by subsection (b),".

On page 82, line 10, strike out "207 (c),".

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, as I have already indicated, I am willing to accept this amendment. I am happy to yield back my time.

Mr. HART. Mr. President, I think I have indicated that the amendment is offered both by myself and my colleague (Mr. GRIFFIN).

I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing, en bloc, to the amendments offered by the Senator from Michigan (Mr. HART) for himself and Mr. GRIFFIN.

The amendments were agreed to en bloc.

Mr. COOPER. Mr. President, I call up two amendments which were to be offered by the Senator from Tennessee (Mr. BAKER), but which have not yet been called up.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 90, line 24, after the word "know-how" insert the following: "which is being used or intended for public or commercial use and".

Mr. COOPER. Mr. President, it was necessary for the junior Senator from Tennessee (Mr. BAKER) to leave the city. Prior to his departure he sent to the desk two amendments to modify section 309 regarding mandatory licensing. I understand he discussed the amendments with the manager of the bill (Mr. MUSKIE) and the manager on the minority side (Mr. BOGGS). I believe there is no opposition to the amendments. The Senator from Tennessee asked if I would call the amendments up for adoption and include for the RECORD his statement in support of the amendments.

To the extent that section 309 covers all know-how and trade secrets known to the owner of my patent, know-how or trade secret, it is too broad to be meaningful. It is important that any know-how or trade secrets used in the manufacture of commercially available devices, vehicles or engines be licensed, but it would be unworkable to require all industries to disclose all know-how and trade secrets, whether used commercially or not.

Thus, the section should be limited to know-how or trade secrets used commercially, whether or not the section is limited to the industries covered in title II.

Mr. MUSKIE. Mr. President, I discussed this amendment with the Senator from Tennessee and the Senator from Kentucky. The American Bar Association patents section raised this question. It is a technical matter. I am perfectly willing to accept the amendment, and also the next amendment which I think the Senator will offer. I think there is no objection on the part of the committee.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. MUSKIE. I yield back my time.

Mr. COOPER. I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment offered by the Senator from Kentucky.

The amendment was agreed to.

Mr. COOPER. Mr. President, I send to the desk the other amendment which was intended to be offered by the Senator from Tennessee (Mr. BAKER).

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 92, beginning at line 7: strike out the subsection (c) and subsection (d) and insert the following new subsections:

"(c) If the owner of any United States letters patent, patent application, trade secret, or know-how and any applicant for a license thereunder pursuant to subsection (a) are unable to agree upon reasonable royalties to be charged under such license or upon any other provision which might be included in such license pursuant to subsection (b), either party may seek a declaration of the amount of royalties to be charged or any other provision of such license in an action for declaratory judgment under Sections 2201 and 2202 of Title 28 of the United States

Code in a court of competent jurisdiction regardless of the amount in controversy or the citizenship of the parties.

"(d) The court, in issuing any order or judgment on any action brought pursuant to subsection (c) of this Section may award or apportion the cost of litigation, including reasonable attorney and expert witness fees whenever the court determines that such action will do justice in the case.

"(e) Nothing in this section shall be construed to grant an exemption from the antitrust laws of the United States or any judgments, ordered or decreed thereunder."

Mr. COOPER. Mr. President, this is the other amendment that was to have been offered by the junior Senator from Tennessee (Mr. BAKER). He asked me if I would call it up. He informed me that he had discussed it with the manager of the bill (Mr. MUSKIE) and the manager on the minority side (Mr. BOGGS).

Senator BAKER has an explanation of some length, which I shall not read in full but summarize it in substance, as I understand it. Under this section of the bill, if there were a matter which came to arbitration as to royalties, it would be resolved through the rules of the American Arbitration Association. Senator BAKER's amendment would provide for substituting a judicial declaratory judgment approach to resolve royalty disputes in the place of the compulsory arbitration route.

I ask unanimous consent that the complete statement of the Senator from Tennessee be printed in the RECORD.

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

DECLARATORY JUDGMENT ROUTE

Section 309(c) of the bill, as amended in Committee, deviates from other provisions of the bill with respect to the manner in which disputes arising under the act should be resolved. It heaps compulsory arbitration upon compulsory licensing, without any right of judicial review.

The bill provides for arbitration under the rules of The American Arbitration Association then in effect. Congress has no control over those rules and they may be changed over night without Congressional control or approval. On the other hand, the rules under which the federal judiciary operates are subject to control by Congress and the procedures available in the Federal Courts under the declaratory judgment statute are well established and adapted to resolve disputes over such things as royalty rates and protection of know-how and trade secrets against disclosure to unauthorized persons.

The purpose of substituting the declaratory judgment route for the compulsory arbitration route, is not only to utilize well known, established procedures in the Federal Courts but also to establish legal precedents to aid in the implementation of the legislation.

Utilization of the federal judiciary will also maintain a balance between the Executive Branch and the judiciary in implementation of all of the provisions of the act instead of relegating the determination of legal relationships to lay arbiters outside the framework of our national government.

The provision for awarding or allocating costs, attorney and expert witness fees is substantially the same as that set forth in Section 304(b) with respect to citizen suits and allows for the application of equitable principles in allocating such costs to prevent injustice.

Mr. MUSKIE. Mr. President, I have already indicated that I have discussed this matter with the Senator from Tennessee and the Senator from Kentucky. This is another amendment in response to questions raised by the section of the American Bar Association dealing with this subject. I think it makes sense. I support the amendment, and I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Kentucky yield back the remainder of his time?

Mr. COOPER. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment offered by the Senator from Kentucky in behalf of the Senator from Tennessee (Mr. BAKER).

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, I send to the desk an amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 69, line 20, insert after "except" the following: "In the case of vehicle or vehicle engines".

On page 70, lines 22 and 23, strike "particularly such control, regulations or restrictions necessary". On line 23 after "with" insert "plans for the implementation of".

Mr. RANDOLPH. Mr. President, I have discussed this amendment with the able Senator from Maine, the chairman of our subcommittee.

The language of section 210, as reported, seemed to me not to appear to fully reflect the intent of the committee with regard to Federal preemption for aircraft, as well as vessels and commercial vehicle operations. The omission on page 69, line 22 of the word, "vehicle," before the word "engines" clouds the precision of the preemption and raises the question of whether States will have the authority to require more restrictive emission standards for aircraft engines than those established by the Secretary under section 202(a). This problem can be remedied by the addition on line 20 after the word "except", the words: "in the case of vehicles and vehicle engines".

Mr. MUSKIE. Mr. President, I think the amendment clarifies the intent of the legislation, and I support it. I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from West Virginia yield back the remainder of his time?

Mr. RANDOLPH. I do.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from West Virginia.

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, I send to the desk another amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 10, line 20, insert the following language as a new paragraph (4) at section 109(a):

"Section 109 (a) (4): The Secretary may establish a standing consulting Committee for each air pollution agent or combination of agents published pursuant to subsection (a)(1) of this section, which shall be comprised of technically qualified individuals representative of state and local governments, industry and the academic community. Such Committee shall recommend to the Secretary appropriate information as he may request on pollution control techniques applicable to such air pollution agent or combination thereof for distribution to the States and to appropriate air pollution control agencies. Such information shall include (i) data relating to the technology and costs of emission control, (ii) such data as are available on the latest available technology and alternative methods of prevention and control of air pollution, and (iii) data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions."

Mr. RANDOLPH. Mr. President, I have also discussed this amendment with the able Senator from Maine. It is my belief that since enactment of the 1967 amendments to the Clean Air Act, it has become apparent that one of the deficiencies in the operation of the National Air Pollution Control Administration has been the agency's lack of understanding of industrial pollution control techniques. It is, of course, easy for Government to arrive at a set figure for industry to meet without giving due consideration to whether those requirements are obtainable on the basis of available control technology.

At times Government officials may believe that where the literature sets out a method which has been proven in the laboratory or in a pilot plant, then this method can be successfully utilized by industry in abating a given air pollution problem. This may or may not be true. Occasions have arisen when there has been a distinct conflict between inexperienced Government technical personnel and industry representatives who must do the "nuts and bolts" work of solving a given air pollution problem. For that reason, I believe it is important that the Secretary of Health, Education, and Welfare have the authority to establish standing consulting committees on the pollutants for which criteria have been issued. These standing committees would advise the Secretary on the appropriate control technology for each pollutant. Following the procedure specified, the information would then be issued to State and local control agencies in the form of a control techniques document.

Senators have noted that we use the language "as he may request." Certainly this would be done after consultation with appropriate advisory committees and Federal departments and agencies.

It should be emphasized that under the present language of section 107(c) of the Clean Air Act, the Secretary of Health, Education, and Welfare is authorized to issue to the States and appropriate air pollution control agencies information on recommended pollution control techniques after consultation with appropriate advisory committees and Federal departments and agencies.

All of us recognize that air pollution and its control is a major issue facing the country today. We all want to improve the quality of the air we breathe as rapidly as possible. However, in the process we need to use care that the control methods which are recommended by Government are based on available con-

trol technology and not merely on theoretical considerations.

I sincerely believe the amendment I have proposed today would be helpful in assuring that the control techniques recommended by NAPCA are practical ones and ones capable of being used successfully by industry in the strenuous efforts which will be needed if this country is to solve its air pollution problems.

I commend, as I have done on many occasions, the able leadership of the Senator from Maine (Mr. MUSKIE). I compliment him for the work he has done on this important bill.

Mr. MUSKIE. I thank the distinguished Senator from West Virginia.

I have indicated my willingness to accept this amendment. Before doing so, I would like to reemphasize that the concept of this bill as it relates to national ambient air quality standards and the deadlines for the automobile industry is not keyed to any condition that the Secretary finds technically and economically feasible. The concept is of public health, and the standards are uncompromisable in that connection.

Nevertheless, under the law since 1967, and after the enactment of this law if it becomes law, there is a requirement on the Secretary, when he issues the criteria documents, to issue, in addition, information on the technology available to deal with the pollutants in question.

The amendment of the Senator from West Virginia would create a mechanism in the form of consulting committees to provide information to the Secretary on request.

Mr. RANDOLPH. That is right.

Mr. MUSKIE. To assist him in preparing those technological documents. I think it would be a most useful device, and for that reason, I support the amendment.

Mr. RANDOLPH. Mr. President, commenting just briefly further, not desiring to take additional time, except to underscore what I have said: This is not a matter of competition between Government and industry. I think, actually, we can complement one the other in an effort to achieve the technology which is needed.

I appreciate the reasonableness of the position taken by the able Senator from Maine.

Mr. MUSKIE. I yield back the remainder of my time.

Mr. RANDOLPH. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment was agreed to.

Mr. MUSKIE. Mr. President, I yield 3 minutes to the distinguished Senator from Kentucky (Mr. COOK) on the bill.

Mr. COOK. Mr. President, yesterday the Senate took up consideration of S. 4358, the National Air Quality Standards Act of 1970. All of the members of the Public Works Committee deserve credit for their tireless efforts in marking up and reporting out what may very well be one of the most significant pieces of legislation of the 91st Congress.

Of course, much attention has been focused on certain sections of the bill, such as section 202 which requires that 1975 model automobiles achieve at least a 90-percent reduction from the 1970 emission standards.

Because of this very close examination of these sections by many of my distinguished colleagues, I shall confine my remarks to section 306, "Federal procurement."

It is with great interest that I take up this section, because on March 20 I introduced S. 3614, the Federal Procurement and Environmental Enhancement Act of 1970. In essence, it would prohibit all departments, independent agencies, and other instrumentalities of the United States using federally appropriated funds, from purchasing goods, materials and services from any person operating in violation of Federal air or water pollution control laws. On May 6 I testified before the Air and Water Pollution Subcommittee on behalf of this measure—which, incidentally, was cosponsored by 10 of my colleagues, including the distinguished senior Senator from Montana. Also, the distinguished chairman of the Air and Water Pollution Subcommittee introduced two major air and water quality bills containing similar, but less comprehensive provisions.

With three exceptions, I shall not explain in detail the provisions of S. 3614. However, I ask unanimous consent that my testimony be printed in the RECORD at this point.

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

TESTIMONY OF SENATOR COOK

Mr. Chairman, I thank this very busy and productive subcommittee for allowing me the opportunity to discuss the concept of prohibiting the federal government from purchasing goods or services from persons in violation of federal pollution control laws.

On March 20, I introduced S. 3614, the "Federal Procurement and Environmental Enhancement Act of 1970," which would accomplish this purpose by amending the Clean Air and the Federal Water Pollution Control Act. If enacted, it would prohibit all departments, independent agencies and other instrumentalities of the United States using federally appropriated funds from purchasing goods, materials and services from any person operating in violation of these two laws. It would require the establishment of contract regulations and the insertion thereof, in all federal procurement contracts.

Sections 13(B)(C) and 113 (B)(C) make mandatory the establishment of contract regulations, and the insertion thereof, in all federal procurement contracts.

By Section (C)(1), the contractor or seller agrees to furnish adequate proof or compliance with the aforementioned air and water pollution acts. I would interpret this to mean a simple statement of compliance. In the alternative, at the time of contract the seller agrees to implement an affirmative plan for compliance pursuant to those acts.

This section takes into account those manufacturers who are earnestly trying to comply with federal pollution laws, while penalizing those who refuse to comply. At the discretion of the Secretary, it also permits the transaction of business with those persons who have filed implementation schedules with the Federal Water Pollution Control Administration and the National Air Pollution Control Administration.

Second, upon notice of a violation—and with notice to the seller—the government is compelled to terminate the agreement. Section (C)(2) also relieves the government of any damages, penalties or other liabilities.

Third, Section (C)(3) permits the continuance of a contract, otherwise terminated, if the seller has implemented an affirmative plan or schedule pursuant to the Air and Water Pollution Control Acts.

Fourth, the last contractual requirement, Section (C)(4) exempts the government from adjusting either the contract price or the delivery or performance schedule due to continuation of the agreement under (C)(3).

A distinction is made in Section (F) between a "contract directly related to a pollution action" and all others. Only in the former would the termination, continuance, and exemption procedures of (C)(2), (3) and (4) apply. The Secretary of the Department of Health, Education, and Welfare or of the Department of the Interior, after consulting with the appropriate contracting agency head, determines the direct relatedness of the pollution action to the contract.

As an example, where the "X" Supply Company's paper factory is violating either the Air or Water Pollution Control Law—all "X" paper contracts with the government are subject to immediate suspension and termination. However, all other "X" contracts supplying other office equipment are not subject to this immediate action.

Section (F) is intended to prevent undue chaos where a large manufacturer supplies a diverse number of items to many government agencies. An immediate end to all such contracts may produce unnecessary adverse effects. Therefore, this section provides that such contracts not directly related "shall continue until completed, at which time the prohibition becomes effective." Consequently, once the government is notified that "X's" paper factory is an unrepentant polluter, henceforth, "X" will be ineligible for all procurement contracts.

Section (A) declares that such person is ineligible for a period up to 3 years. At the discretion of the Secretary, the seller may become eligible prior to 3 years if he determines that the pollution has been abated.

To insure that the vast reaches of the federal bureaucracy are informed of individual violations, Section (B) causes both the Secretary of the Department of Health, Education, and Welfare and the Department of the Interior to establish the necessary notification procedures.

Finally, Section (D) exempts the Department of Defense from this act, if the Secretary determines that such exemption is necessary for national defense. It does provide, however, for public hearings on the pollution action. In this manner, the necessary attention may be focused on the problem to encourage voluntary compliance.

Also, the distinguished chairman of this subcommittee has introduced two bills containing similar provisions. Senator Muskie's S. 3546, the "National Air Quality Standards Act of 1970" and S. 3637, the "National Water Quality Standards Act of 1970" state that no federal department or agency shall procure goods from those in violation of these standards.

Mr. Chairman, since the introduction of these measures a number of objections have been raised questioning the need and practicability of such a prohibition.

As to the first objection, I can only say that the prevention of further degradation of the environment requires a total commitment by all—especially the federal government. With a budget exceeding $200 billion per year, the federal government is the largest single purchaser of goods and services. A substantial portion of this amount is for procurement of goods and materials ranging from highly sophisticated weapons

systems to ordinary supplies necessary for day-to-day operation.

As to its feasibility, it has long been the established policy of this government to declare that an agreed-upon public policy be followed in the government's dealings in the free marketplace. Desired policy has been implemented by both executive fiat and legislation.

Legislatively, the Congress enacted the "Buy American Act" (41 USC 10). This law requires the use of American manufactured materials and American mined supplies in "every contract, for construction, alteration or repair of any public building". Failure on the part of the contractor to comply may result in his name being placed on a debarment or blacklist and declared an ineligible bidder for a 3-year period.

There have been a variety of standard labor clauses dealing with employment and labor and prescribed for use in government contracts. The Davis-Bacon Act, the *Copeland Anti-Kickback Act* and the *Work Hours Act* (5 USC 673(c); 28 USC 1499; 40 USC 327–332) govern the employment of laborers and mechanics on public works projects. The *Davis-Bacon Act* (40 USC 276a–276a–5) prescribes that such employees are entitled to the minimum wage as determined by the Secretary of Labor to the prevailing corresponding classes of laborers and mechanics or similar projects in the locale where the contract is to be performed. The Copeland Act prohibits the requiring by a contractor from requiring any "kickbacks from any employees so defined in the regulations." The Act is intended to aid in the enforcement of minimum wage provisions of the Davis-Bacon Act and other similar statutes. The Work Hours Act requires that employees must be paid at least time and one-half their basic rates of pay for hours worked in excess of eight hours per day or forty per week.

Contracts for the procurement of services are governed by the terms of the *Walsh-Healy Act*, (41 USC 35). Any contract entered into by the executive or legislative branch or any instrumentality of the United States shall include provisions relating to minimum wages, child labor, maximum working hours and health and safety conditions. A breach of any of these conditions requires not only the cancellation of the contract, but subjects the party to fines as well. In 1965, the Congress passed the *Service Contract Act*, (41 USC 351), extending to employees of government service contracts the federal minimum wage law, a breach of this law subjects the contractor to cancellation and the difference in the wages paid and what is required by law to be paid.

Because of Congress' concern with the decline of the small businessman, 41 USC 252 provides that "a fair proportion of the total purchases and contracts for property and services for the government shall be placed with small business concerns."

By executive action all government contracts and subcontracts must contain an equal opportunity clause prohibiting contractors from discriminating against employees on the basis of race, color, creed, religion or national origin, in hiring, promotion, pay rates and job training. The contract clause also requires affirmative action on the part of the contractor and compliance with executive orders 10925 and 11246, and regulations issued by the Secretary of Labor pursuant to those orders. It also requires the filing of reports and for termination in cases of non-compliance.

The protection of American industry small business, and the social and civil rights of the American laborer are all worthy of a firm governmental policy of enforcement through the procurement of goods and services. I contend that the protection of the environment deserves no less a firm policy.

An additional question raised about S. 3614 is the lack of hearing procedures ensuring a fair termination because of a pollution violation. Experience has shown that the time consuming and complicated procedures required by the Federal Water Pollution Control Act provides more than ample opportunity for an alleged polluter to be accorded a full hearing. In regard to hearings on the contract cancellation due to a pollution violation, the existing standard government contract procedures governing such matters would apply. However, if the present regulations are inadequate, I support any necessary curing legislation.

Also, after reviewing all the pending legislative measures, it appears that they are limited in application to the Federal Water Pollution Control Act and the Clean Air Act. However, because of the long and tedious enforcement procedures involved in these acts, the Department of Justice has recently filed charges under an obscure 1899 federal statute. This law, Section 13 of the River and Harbor Act, (33 USC 407), prohibits the dumping or depositing of "any refuse matter of any kind or description" into any navigable water or tributary thereof. I suggest, therefore, that the subcommittee also consider applying the governmental procurement ban to those persons found in violation of this law.

Mr. Chairman, while the Congress is considering these bills, the Executive Branch has also expressed an interest in this idea. On February 21 I wrote to the Secretary of Defense concerning the President's February 4 executive order in regard to the prevention, control and abatement of air and water pollution at all federal facilities. In the letter, I suggested that the Department of Defense take the lead in administratively implementing—by amending the Armed Services procurement regulations—the suggestions that later developed into S. 3614. The Department ruled that a White House directed inter-agency task force was exploring the possibility of developing "a comprehensive federal program for utilizing purchasing, contracting and other policies to reduce environmental pollution". (At this point, I insert for the record, copies of this correspondence). I have requested a status report on the work of the task force, but thus far I have received no reply.

On February 24, I wrote a letter to every cabinet level department requesting their comments on the implementation of the procurement ban at the department level. Most of the replies stated that (1) any revision of procurement contracts should be directed to the General Services Administration, or (2) the White House is presently studying this matter. However, the Department of Interior replied that they have "reached the conclusion that we must include provisions in our contracts and grants requiring contractors and grantees to comply with regulatory standards." But, the Department also recommended that to have the desired effect any such procurement requirements must have government-wide application. (I include in the record, my letter and the replies from Interior and the other departments.)

Mr. Chairman, the federal government has an obligation to provide moral leadership in the fight for a livable environment. The passage of this legislation would not only be a positive step in this direction, but also give industry additional incentive to comply with existing law. I, therefore, urge the subcommittee to give serious consideration to this proposal.

Mr. COOK. Mr. President, section 306 of the committee bill, while similar in principle, departs considerably from S. 3614 and the existing law upon which it was modeled. First, the procurement prohibition takes effect only upon a "knowing" violation of standards defined in the act. I see no reason for the insertion of an additional factor which can only work to the detriment of the purpose of the section. The word "knowing" creates a presumption not found in similar and existing laws.

Other Federal procurement laws are not encumbered by such language. The Buy American Act—41 U.S.C. 10, 10(b)—bars a contractor from Government work for a period of 3 years upon "a failure to comply with such provisions" of that act. The Walsh-Healy Act—41 U.S.C. 35—relating to minimum wages, maximum working hours, child labor laws, and health and safety conditions, subjects a violator to its penalty provision upon "any breach or violation of any of the stipulations" in the contract. Also, the Service Contract Act—41 U.S.C. 351—which extends to employees of Government service contracts the Federal minimum wage law, subjects a violator to the procurement penalty upon "any violation" or "when a violation is found." Mr. President, I contend that pollution violators deserve no greater protection than other lawbreakers.

Another major difference between the two measures is that section 306 of the committee bill only applies prospectively. Therefore, a polluter presently in violation of air quality standards is allowed to continue any existing contract, and to continue profiting from the U.S. Government at the expense of the community. However, S. 3614 applies not only prospectively, but also provides for the cancellation during the life of the contract should a pollution violation occur after both parties enter into the agreement.

Again, I can only cite the Walsh-Healy Act which permits the Federal Government to cancel a contract and "to make open market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor." The Service Contract Act also provides for "cancellation" and the charging of additional cost.

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

Mr. MUSKIE. I yield 2 additional minutes to the Senator.

Mr. COOK. The last major difference between the two measures is that S. 4358 would apply the procurement ban only to "any facilities subject to such action by the court which are owned, leased, or supervised by such person." In explaining this language, the committee report states that procurement sanctions are limited "to contracts affecting only the facility not in compliance, rather than an entire corporate entity or operative division." It further states that a company with a "contract unre'ated to the violation" is eligible for business with the Federal Government. I must differ with the committee on this point. It is possible, even with the strong sanctions contained in this act, that a large and diversified corporation may continue its multi-million dollar contractual arrangements with the Government even though one of its plants or factories is guilty of a so-called "unrelated violation." I can see no reason for such distinction.

A company is either in compliance with the law, or it is not in compliance. The Government will either do busi-

ness with pollution lawbreakers, or it will not do business with pollution lawbreakers.

If a total procurement ban is in effect for the entire company it will certainly encourage compliance with the law. That I believe should be the purpose of section 306. That is the purpose of S. 3614.

Mr. President, I feel very strongly about the points I have discussed. However, I am fully aware of the pressures that the Public Works Committee operated under in drafting this far-reaching legislation. I commend the committee for reporting out the most stringent pollution control legislation in history. Therefore, in order that the Senate conferees may press for complete acceptance of the bill in conference with the House, I decline to offer my suggestions as amendments. However, since the House bill differs from ours, I fully expect my distinguished colleagues to retain section 306 in conference.

Mr. MUSKIE. I yield myself 2 minutes.

Mr. President, I compliment the distinguished Senator from Kentucky for having pressed this concept. Had it not been for his interest, I am sure that we would not have it even in its present form in the committee bill.

I ask unanimous consent to have printed at this point in the RECORD the portion of the committee report relating to this subject, so that we may have a full understanding of what the committee had in mind.

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

SECTION 306. FEDERAL PROCUREMENT

The Committee considered proposals offered by Senator Muskie and by Senator Cook to assure that the Federal Government does not patronize or subsidize polluters through its procurement practices and policies.

Section 306 would make any person or corporation who fails to comply with a court order issued under this Act or who is convicted of a knowing violation of any schedule or timetable of compliance, emission requirement, prohibition, emission standard, or standard of performance, ineligible for a Federal contract for any work to be done at the polluting facility. This ineligibility would continue until the Secretary certifies that the facility is in compliance with the court order or the provisions of the Act.

This section would be limited, whenever feasible and reasonable, to contracts affecting only the facility not in compliance, rather than an entire corporate entity or operating division.

There might be cases where a plant could not participate in a Federal contract due to a violation but another plant owned by the same company might bid and transfer work to the first plant. This type of action would circumvent the intent of this provision. In this case, the company's second facility should also be barred from bidding until the first plant returns to compliance.

There would also be instances where a second plant within a corporation was seeking a contract unrelated to the violation at the first plant. In such a case, the unrelated facility should be permitted to bid and receive Federal contracts.

It is anticipated by the Committee that the Executive Branch will, in the near future, publish new Federal contract guidelines that will enable the Federal Government to suspend or revoke a contract once the contracting party is found to be in noncompliance with the air pollution standards or other requirements of this Act. This executive action would be specifically mandated by section 306(c).

The effectiveness of this section would depend on fast, accurate dissemination of information. All Federal agencies would have to be rapidly apprised of any abatement order or conviction which would bar a facility from eligibility for Federal contracts. The Secretary would also have to act expeditiously to certify that a facility had achieved compliance, and notify all Federal agencies of that fact. Delays in reporting such information, leading to inaccurate public disclosures, would quickly render this section unworkable.

Mr. MUSKIE. Mr. President, earlier I sent to the desk an amendment on behalf of myself and the Senator from Kentucky (Mr. COOPER). I call up the amendment at this time.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. MUSKIE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 48, line 11, insert the following new paragraph (4), and renumber succeeding paragraphs:

"(4) Six months following enactment of this section, and each year thereafter, the Secretary shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollution agents on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and, following such hearings as he may deem advisable, any recommendations for additional Congressional action necessary to achieve the purposes of this Act. In gathering information for the purposes of the paragraph and in connection with any hearing, the provisions of subsection (5)(B) of this section shall apply."

Mr. MUSKIE. Mr. President, this is an amendment which I offered in committee in lieu of the judicial review amendment which Senator COOPER introduced and which the committee adopted. Nevertheless, the Senator from Kentucky (Mr. COOPER) thought that this provision ought to be included as complementary to his amendment on judicial review, because it provides for periodic reports to Congress on the development of systems necessary to implement the emission standards established pursuant to this section.

I think that those reports would be useful to Congress. I think they would be useful to us in evaluating any request for an extension of the deadline that might be made. So I offered the amendment, and the Senator from Kentucky supports it, and, so far as I know, the whole committee does.

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

Mr. MUSKIE. I yield.

Mr. COOPER. Mr. President, I am glad the Senator has offered this amendment. It would present to Congress, I believe, every 6 months——

Mr. MUSKIE. Six months would be the first one, and then every year thereafter.

Mr. COOPER. Progress on this bill; so if it became apparent to Congress that some action should be taken, it would be in a better position to do so. I am very pleased that the Senator has offered this amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. HANSEN. Mr. President, before that, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. HANSEN. Mr. President, I was just talking with a Member of Parliament from Israel. In discussing the proposed legislation before the Senate this afternoon, he observed that the nation of Israel had passed similar legislation some 8 years ago. He also observed that that legislation had never been enforced.

My question to the distinguished Senator from Maine is this: Am I correct that if the situation arose in time of war or in time of emergency when it was obvious that the paramount interest of the country would require that these standards be held in abeyance, when other concerns are of greater moment to us than the quality of the air under this legislation, does the President, or does someone in this country have the authority to suspend them for such time as may be required, in order to serve the paramount interest of the country?

Mr. MUSKIE. Congress has such authority, and only Congress.

Mr. HANSEN. Only Congress. The President does not have that authority.

Mr. MUSKIE. No.

Mr. HANSEN. I thank my distinguished colleague.

The PRESIDING OFFICER (Mr. GURNEY). The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

Mr. BOGGS. Mr. President, on behalf of the distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT), I ask unanimous consent that a statement by him in support of S. 4358, the bill now pending before the Senate, be printed in the RECORD.

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

STATEMENT OF SENATOR SCOTT

Mr. President, I want to congratulate Senator Randolph and the members of the Public Works Committee on the excellent bill they have reported to us. S. 4358 represents the combined input of the Administration, both Houses of Congress and numerous concerned groups from the national community. I note with pleasure that many of the provisions of President Nixon's S. 3466, Amendments to the Clean Air Act, which I had the pleasure to work on and introduce, have been included in the Committee version. This legislation represents the highest form of nonpartisan political cooperation. Senators from both sides of the aisle took an active personal interest in developing the strongest possible air pollution control legislation. The bill before us represents a dynamic and aggressive assault on our national air pollution problems.

Every year, 200 million tons of contaminants are spilled into the air. The presence

of these contaminants is not only dangerous from a health point of view, but it is also extremely costly in terms of economic damage to clothing, buildings, plant life and animal life. Unless this outpouring of contaminants is controlled, scientists tell us we may very well experience irreversible atmospheric and climatic changes capable of producing a snowballing adverse effect to the health and safety of our citizens. Four aspects of this bill are worthy of special note. They would accomplish:

1. The implementation of a system of national ambient air quality standards to reduce at least ten major contaminants. These national ambient air quality standards should provide a minimum level of national air quality protection. Along with national air quality goals and standards for newly constructed sources of pollution, the Secretary of HEW has the authority to enforce a cleaner air standard.

2. The "Hazardous Substances" provision gives the Secretary of HEW the authority to prohibit emissions of those substances having an adverse effect on the health of the surrounding community.

3. Automobile emissions comprise nearly 50 percent of our national air pollution control problem. By 1975, subject to possible delay of one year, the automobile industry will have to meet certain emission standards. This provision is tough, but necessary if we are to make a serious impact on our air pollution control problems.

4. The bill establishes a novel concept of public participation in the environmental enforcement process. The citizens suits authorized in the legislation will guarantee that public officials are making good on our national commitment to provide meaningful environmental protection.

Mr. President. No discussion of the environment would be complete if I were not to pay a special tribute to the Ranking Minority member of the Sub-committee on Air and Water Pollution, the distinguished Senator from Delaware, Mr. Boggs. Few men in this chamber have contributed as much to the betterment of our environment than the Senator from Delaware. His efforts, together with those of the Chairman of the Sub-committee, Mr. Muskie, and all members, both Republican and Democrat, are reflected in this meaningful piece of legislation.

In 1947, a rare air inversion over the town of Donora, Pennsylvania, trapped emissions from industrial plants in the Pittsburgh area. A lethal cloud of contaminants suffocated Donora for five days. During this period of time, over twenty people died and hundreds of others experienced severe respiratory problems. To guarantee that future generations of Americans can live without fear of the destruction of the very air they breathe, I urge immediate passage.

Mr. GRIFFIN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. GRIFFIN. The Senator from Nebraska (Mr. HRUSKA) could not be here this afternoon, but he was very much concerned and wanted an indication of his concern reflected in this debate, regarding the provision in this bill authorizing certain class actions against the Secretary of Health, Education, and Welfare, or a manufacturer, in the event of noncompliance.

As a member of the Committee on the Judiciary, it is disturbing to me that this far-reaching provision was included in the bill without any testimony from the Judicial Conference, the Department of Justice, or the Office of Budget and Management concerning the possible impact this might have on the Federal judiciary.

No hearings were held. Obviously, it is related to other legislation providing for class actions—legislation being considered now by the Commerce and Judiciary Committees.

It would seem to me, even if such actions were to be authorized, that it would have been more appropriate to allow them to be instituted at some later date, after a period of time had elapsed, after Congress had an opportunity by 1975 or 1976 to see whether these standards could be met.

But to write such a provision into this bill now, without any idea of what it means—especially in terms of our judicial system—seems very unfortunate.

The Senator from Nebraska (Mr. HRUSKA), the ranking member of the Judiciary Committee, wanted that concern expressed. I certainly share it.

I yield now to the Senator from Kentucky.

Mr. COOK. Mr. President, I am very much concerned about this, as a member of both the Commerce and Judiciary Committees. I suggested at a much earlier date that we conceivably in the respective committees could get together and make a pattern for class actions.

I want the Senate to understand that we are now taking up in the Judiciary Committee a suit in the District of Columbia that, it is contended, could possibly include as many as 117 million plaintiffs. There is presently a suit in New York with 3,750,000 plaintiffs. There was a settlement made in a case, not too long ago, which was a class action, which was settled for a sum of approximately $135 million, and the judge in writing his opinion suggested acceptance of this for some 70,000 or 80,000 plaintiffs, stating that they should accept this settlement because the chances of their recovery on a trial were 50–50, if not less.

I would only say to the Senator that I am glad he brought this up. I am very much concerned about this discussion of a plaintiff being able to bring an action which he himself—and members like him—seeks, but he knows not whether anyone else has been damaged in any way, shape, or form. Yet, we set ourselves up here in a position to make it more convenient to settle a case than to try it on its own merits because of the overall estimated cost of a trial.

I repeat, I am glad the Senator brought up that point, because we have been struggling between the Commerce and Judiciary Committees for many weeks in an effort to bring up a motion for a class action suit.

I am sorry that we did not have an opportunity to sit down with the Public Works Committee and come up with basic standards for all class action suits that would be, at least, legally sanctioned by Congress. Suffice it to say that I am glad the Senator brought it up and that these remarks are in the RECORD.

Mr. GRIFFIN. Mr. President, as in the case of Senators, the various interested agencies could not learn about some provisions of this bill until a text was finally available on Monday of this week.

Mr. MUSKIE. Mr. President, let me say in response that first, there were hearings. This provision was included in legislation introduced last winter. There was considerable testimony. We have here, for instance, the testimony of Governor Sargent of Massachusetts, endorsing it.

We have the testimony of Paul Treusch, President of the Federal Bar Association, endorsing it. We have the testimony of Douglas Head, the Republican Attorney General of the State of Minnesota, endorsing it. We have Prof. James Jeans of the American Trial Lawyers Association, endorsing it.

Furthermore, this is not a class action provision. I suggest that Senators read it.

Senate bill 3201, to which comparison was made by the Senator from Nebraska (Mr. HRUSKA) on yesterday, is a class action bill. S. 4358 is not. S. 4358 is limited to citizens acting on their own behalf.

Senate bill 3201 provides damages and a remedy for recovery of fines and restitution, and other monetary damages. The pending bill is limited to seek abatement of violation of standards established administratively under the act, and expressly excludes damage actions.

Senate bill 3201 provides for redress of consumer injury. The pending bill is limited to an action for enforcement on abatement of violations of administratively set standards.

Mr. President, I ask unanimous consent to have printed in the RECORD two staff memoranda prepared for me in response to the comments yesterday of the Senator from Nebraska (Mr. HRUSKA.)

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

MEMORANDUM

1. The Administrative Procedure Act provides that reviewing courts "shall . . . compel agency action unlawfully withheld." The concept of compelling bureaucratic agencies to carry out their duties is integral to democratic society. Senator Hruska mentioned yesterday an example of where an administrative agency failed to act. The concept in the bill is that administrative failure should not frustrate public policy and that citizens should have the right to seek enforcement where administrative agencies fail.

2. Extracts from the hearing record on the citizen suit provision:

a. Governor Sargent, Republican Governor of Massachusetts, speaking on behalf of the National Governors Conference in response to a question if he supported the concept. Governor Sargent replied as follows: "Yes, I do. As a matter of fact, in my message to the legislature this year, I proposed a bill of rights which would give to the citizens of our State the right to clean air, the right to waters that are not contaminated, and the opportunity to take legal action if legal action is called for."

b. Paul Treusch, President of the Federal Bar Association "Section 4, by adding Section 108(c)(13), authorizes suits for private enforcement of air quality standards, implementation plans, and emission standards established under this section. We are very much in favor of this provision. Not only will this provision help establish a distinct public attitude of participation in the quality of our environment, it will give the public a problem-resolving tool to protect and enhance air quality."

c. Douglas Head, Republican Attorney

General, State of Minnesota "The provision for private civil suits would be supported, I believe, by a large number of attorneys general with the caveat . . .

"The one danger that we can see from the men that I have talked with is the multiplicity of suits that would override compliance agreement already entered into by the Pollution Control Agency so that I believe that citizens should be very carefully correlated with the present enforcement provision so that we do not unnecessarily duplicate the enforcement of the law and that we do not unnecessarily clog up the courts where we are in fact making very swift efforts to enforce." The provision as currently drafted affords these protections.

d. Professor James Jeans for the American Trial Lawyers Association ". . . but we do want to commend the authors of the bill for the recognition of the value of private actions in a democratic society."

3. The fact that (a) citizens will be enforcing the same standards as administrative agencies, (b) notices are required to administrative agencies prior to bringing of an enforcement by citizens, and (c) clear discretion of the court to consolidate actions, will avoid multiplicity of suits.

4. The provision on the award of cost litigation is intended by the Committee, as it is stated in the report, to provide a mechanism for the courts to avoid frivolous and harassing litigation by permitting the courts to award costs to defendents when plaintiffs seek only harassment.

5. The provision in the bill S. 4358 providing for citizen suits bears little resemblance to the provision mentioned by Senator Hruska in the bill S. 3201.

a. S. 3201 provides for class action, such class required to meet the complex and difficult requirements of Rule 23 of the Federal Rules of Civil Procedures. S. 4358 is limited to citizens acting on their own behalf.

b. S. 3201 is designed to provide a damages remedy for recovery of fines, restitution and other monetary damages. S. 4358 is limited to seeking abatement of violations of standards established administratively under the Act and expressly excludes damage actions.

c. S. 3201 provides for redress of consumer inqury. S. 4358 is limited to an action for enforcement or abatement of a violation of an administratively set standard.

6. Citizen enforcement may add to the burden of the courts—but in a democracy, the answer cannot lie in the denial of citizen access to the courts—In a society of Government of and by the people we foreclose participation by citizens at our peril. The provision is directed at providing citizen enforcement when administrative bureaucracies fail to act.

7. Time for establishment of enforceable standards is at a maximum twelve months away and it will be considerably more time before many administrative standards are eligible for enforcement—so any impact on the courts is in effect postponed until the courts will have the additional judges mentioned by Senator Hruska.

8. The Council on Environmental Quality, chaired by Russell Train, has established a Legal Advisory Committee to assist the Council. The Committee's chairman is Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, and it includes many others. I ask unanimous consent that the membership of the Committee be inserted at this point in the record.

Malcolm Baldwin, Esq. senior legal associate, the Conservation Foundation, Washington, D.C.; William T. Coleman, Esq., Dilworth, Paxson, Kalish and Levy, Philadelphia, Pa.; Prof. David Currie, University of Chicago Law School and coordinator for Environmental Quality to the Governor of Illinois; Prof. Frank P. Grad, director, Legislative Drafting Service, Columbia Law School; Roger P. Hansen, executive director, Rocky Mountain Center on Environment, Denver, Colo.; A. Wesley Hodge, Esq., Hodge, Hillis and Dahlgren, Seattle, Wash.; Prof. Louis Jaffe, Harvard Law School; William F. Kennedy, Esq., corporate counsel, General Electric Co.; Nicholas Robinson, chairman, Environmental Law Council, Columbia Law School; Prof. Ann Strong, director, Institute for Environmental Studies, University of Pennsylvania; Prof. Joseph Sax, University of Michigan Law School; David Sive, Esq., Winer, Neuberger and Sive, New York City.

The Advisory Committee last week passed the following resolution on citizen participation in the courts:

It is the sense of the Advisory Committee that: Private litigation before courts and administrative agencies has been and will continue to be an important environmental protection technique supplementing and reinforcing government environmental protection programs.

ARGUMENTS ON CITIZEN SUITS

1. The citizen suit provision is new to members of the Senate and has not had adequate hearing.

A similar provision was included in S. 3546 as introduced, and substantial testimony from citizens' groups supported it as a key provision in this year's air pollution legislation.

2. This provision would encourage frivolous or harassing suits against industries and government agencies.

The bill provides no action for damages, only for the abatement of violation of standards, which are public policy. Expressly for the purpose of limiting harassing or frivolous suits, the bill provides that the court may award the costs of litigation, including reasonable attorney and expert witness, to either party as the public interest requires. The court would surely award costs to the defendant, a potentially expensive risk for the plaintiff, where the litigation was obviously harassing or frivolous.

3. A citizen suit provision is based on the assumption that the Federal and State agencies will be incompetent, corrupt or otherwise not discharge their responsibilities.

Citizens in bringing such actions are performing a public service. The limited resources of many State enforcement agencies, bearing the first line of responsibility under this bill, will be fully extended. This provision, requiring 30 days notice to State and Federal agencies, in which they may initiate abatement proceedings, will allow many violations to come to their attention which might otherwise escape notice. The only exceptions to this 30 day period for administrative action come for hazardous emissions or those of which the Secretary can be assumed to already have noticed.

4. Authorizing citizens actions against polluters and government agencies would burden already clogged courts.

A great number of these actions would come to the courts anyway, even if vigorously pursued by administrative agencies. Enforcement of an order to abate must be obtained in the courts, whether an agency or a private citizen initiates action. But more importantly, should the granting and protection of a right to clean air rooted in public policy be limited to what the courts can comfortably handle? We must legislate to protect the public health, then strengthen our court system as appears necessary.

5. The courts do not have the competence to handle the issues in air pollution control actions, and sending such actions there rather than confining them to expert administrative agencies, delays and confuses enforcement.

Enforcement of air pollution standards and regulations is not a technical matter beyond the competence of courts. This provision merely asks the court to do what it does best: a fact finding job as to violations of a definite numerical standard. If a violation is found, a judicial remedy is fashioned as indicated above, citizen enforcement would not disrupt administrative enforcement, but would reinforce and extend it. Standards would be the same under either mode.

Mr. MUSKIE. Mr. President, we are talking, gentlemen, about apples and pears. What we are talking about here is a judicial way for citizens to enforce the provisions of this act.

May I make another point about it, that before any citizen can bring an action, he is required to notify the enforcement agency concerned of his intent to do so, and the specific, alleged violation which he has in mind. In other words, the idea is to use citizens to trigger the enforcement mechanism. If that enforcement mechanism does not respond, then the citizen has his right to go to court. This is a much more limited application of the concept of citizen access to the courts than anything that has been discussed by the Senator from Nebraska (Mr. HRUSKA) or the Senator from Kentucky (Mr. COOK).

Mr. COOK. Mr. President, I merely brought this up in regard to the remarks of the Senator from Michigan (Mr. GRIFFIN), because I felt that it would be a good opportunity to do so. I am sorry that that opportunity has passed. I felt it was a good opportunity when I first suggested it, that we might change the uniform standards for class actions because the call for class actions was in the language, regardless of the amount in controversy, or the citizenship of the parties, which is in the language on page 83, lines 18 and 19, which constitutes, in essence, a class action. I felt that uniformity of language for class actions for this bill, and S. 3201, would be a good step forward in the name of uniformity.

Mr. MUSKIE. This does not require as class actions do, identification of the class or group before a suit is brought in the name of a class. This can be brought by an individual citizen. The court has authority to consolidate actions that might be taken by individual citizens.

Mr. COOK. May I say that the opportunity for the court to consolidate actions has been a part of Federal rules of procedure for a long, long time. That is already in existence.

Mr. MUSKIE. I understand. But the important distinction I want to make, if it is one—and I am told that it is—is that it is not necessary for a citizen to take advantage of this right to establish himself as a member of a class. He can bring suit as an individual citizen under this provision.

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

Mr. MUSKIE. I yield.

Mr. RANDOLPH. Mr. President, the Senator from Maine mentioned several individuals who appeared at the hearings on that occasion. I would like the RECORD to reflect that one of the gentlemen was Stanley Preiser, of West Virginia, who is recognized as one of the finest trial lawyers not only in our State but also in the Nation.

Mr. GRIFFIN. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 3 minutes.

Mr. GRIFFIN. Mr. President, I understand now that hearings were held around a year ago—and I stand corrected. I was mistaken.

Mr. MUSKIE. They were held on March 23 of this year, and not a year ago.

Mr. GRIFFIN. But, in spite of the impact upon the Federal courts, it is still true, I take it, that the views of the Justice Department and the views of the Bureau of the Budget was not requested.

Mr. MUSKIE. This is part of every bill. Administrative agencies are asked to report. This provision is in the legislation introduced. If these departments did not report on the matter, it is not my responsibility. It is theirs.

Mr. GRIFFIN. Mr. President, I wanted to make the point that this is a matter which is very much within the interest of the jurisdiction of the Judiciary Committee. I do stand corrected on the point that some hearings were held.

Mr. COOK. Mr. President, will the Senator yield 1 minute to me?

Mr. MUSKIE. Mr. President, I yield 1 additional minute to the Senator from Kentucky.

Mr. COOK. Mr. President, I state to the Senator from West Virginia that I am delighted that Mr. Preisor testified. Mr. Preisor and I went to law school together. He is a fine and distinguished lawyer.

I say again to the Senator from Maine that I merely brought this up for the RECORD. Page 84, lines 9 and 10 state:

> Nothing in this section shall affect the right of such persons as a class or as individuals—

That is plural. It is not as an individual, but as individuals who would constitute a class.

I merely set this out for the legislative record.

I say this to again emphasize that I think they are discussing and indicating a class action.

In this instance there is no jurisdictional amount in the bill. Therefore, the limit of authority is the $10,000 amount to get into the Federal courts.

I merely say that S. 3201 is the same. It allows anyone to bring suit in Federal court on the basis of $10 or more. But we are writing new authority and a new cause of action in the Federal court and not placing a jurisdictional amount on it.

I might say that I have no objection except that I think in the future we will eliminate all jurisdictional amounts in Federal court and we had better be ready to appoint a whale of a lot more Federal judges.

Mr. MUSKIE. Mr. President, I read from page 83, lines 24 and 25 of the bill. It states that such actions "may be brought by one or more persons on their own behalf."

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

Mr. MUSKIE. Mr. President, I yield 2 minutes to the Senator from Michigan.

Mr. HART. Mr. President, I would like to address myself at this time to section 304 of S. 4358, the citizen suit provision of the bill. I regard this provision as one of the most attractive features of the bill and am therefore disturbed by criticism of it which has been offered both within and without this Chamber.

The basic argument for the provision is plain: namely, that Government simply is not equipped to take court action against the numerous violations of legislation of this type which are likely to occur. In testifying on a similar bill before the Senate Subcommittee on Energy, Natural Resources and the Environment, former Attorney General Ramsey Clark spoke convincingly of this inevitable incapability. Mr. Clark stated:

> It will be impossible for government enforcement to control all significant acts of pollution. . . . The extension of private right, . . . and effective sanctions for the persons directly affected or concerned will be essential if vital interests are to be protected. Our experience in areas of massive unlawful racial discrimination, such as in schooling, employment, and housing tells us that however hard it might try, government will never have the manpower, the techniques, or the awareness necessary to enforce the law for all. Private enforcement of those laws is the only way the individual can be assured that the rights cannot be violated with impunity.
>
> Pollution control is another such area. If we are really serious about controlling the quality of our environment before it destroys the quality of our lives, we must give the individuals affected by, or concerned about pollutions in his life, the power to stop them through legal process.
>
> Far from risking an undue or inhibiting interference with Government enforcement, it will provide powerful supplementary enforcement. . . . and an effective and desirable prod to officials to do their duty.

It has been argued, however, that conferring additional rights on the citizen may burden the courts unduly. I would argue that the citizen suit provision of S. 4358 has been carefully drafted to prevent this consequence from arising. First of all, it should be noted that the bill makes no provision for damages to the individual. It therefore provides no incentives to suit other than to protect the health and welfare of those suing and others similarly situated. It will be the rare, rather than the ordinary, person, I suspect, who, with no hope of financial gain and the very real prospect of financial loss, will initiate court action under this bill. For the most part, only in the case where there is a crying need for action will action in fact be likely. In such cases, I would argue that action must be in the public interest.

The bill also provides for a notice requirement to State and Federal pollution agencies prior to the bringing of suit. This requirement, it is expected, will have the effect of prodding these agencies to act. In many cases, it is hoped, they will be able to act without resorting to the courts.

Even if litigation is in fact expanded under this bill, it must still be contended that such expansion is justifiable. As Ramsey Clark also stated at the hearings previously referred to:

> There is no question that justice is denied in America because it is delayed, and court backlogs are a serious problem for society from every standpoint. But society has to have priorities and survival should be a pretty high priority. Survival depends upon the protection of our environment, and I think legal redress in America will be a major method of protecting that environment. The imposition of any additional caseload that might follow from this bill on the courts is one that it must gladly assume.

It may be that our judicial system must be expanded to provide for this caseload. Or it may be, as Mr. Clark states, that we may have to adjust the priorities within that system. The time perhaps has come to take major action to compel that adjustment. It is in part for that reason that some have suggested the elimination of threshold procedural defenses that consume a court's time en route to its examination of the merits of cases. And it is in part for that reason that some have suggested an end to the fault principle that monopolizes so much time in automobile accident litigation.

It has been argued that even if the courts can meet the burden of cases arising under this bill, defendants may be unduly harassed by frivolous suits which may be brought. The bill defends this criticism by providing that the court "may award costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines such action is in the public interest." Given the escalating costs of attorneys fees today, I find it difficult to imagine that many will engage in the frivolity which appears so worrisome to some.

Yesterday, the distinguished Senator from Nebraska (Mr. HRUSKA) referred to Chief Justice Burger's remarks about the dangers inherent in providing additional rights of action enforceable in Federal courts.

I am aware of the Chief Justice's caution in this area, and I believe it to be soundly based. However, I would remind my colleagues of another cautionary remark to which he referred in one of his opinions, namely, *Office of Communication of United Church of Christ* v. *FCC*, 359 F. 2d 994 (1966). In that opinion referring to the right of citizens to appear before the FCC, he cited with approval a statement of the late Edmond Cahn, which reads:

> Some consumers need bread; others need Shakespeare; others need their rightful place in the national society—what they all need is processors of law who will consider the people's needs more significant than administrative convenience.

It is my hope that both we and those administering our judicial system will take heed of that advice and continue to be guided by it.

Mr. President, I was off the floor when the Senator from Kentucky made his remarks and I may not be responding to what was said.

I would make this point, however, relative to the specific issue now before the Senate.

In legislation of this type, we will find very likely noncompliance which in number or degree are far beyond the capacity of the Government to respond to. This is one of the frustrations.

We do not have to serve on commissions such as the Commission on Civil Disorders or Violence or anything else to know that one of the frustrations across

this country is the increasing number of our citizens who feel that Congress has made them a promise, but that there are no means of obtaining delivery on that promise.

The burden on the Department of Justice is so great that the agency cannot respond to it. To allow the citizen the right to sue on his own behalf may indeed increase the burden on the Federal courts. But this is not an adequate response to the frustrated citizen who seeks that right.

Our obligation, I feel, is to bear that burden by expanding the capacity of the court system to respond to the frustrated citizens.

Mr. MATHIAS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 62, after line 22, insert:

"(d) The Secretary shall publish in the Federal Register the results of each of his tests of vehicles and vehicle engines under this section, as promptly as possible and at least every six months, in such nontechnical manner as will reasonably disclose to prospective purchasers (at retail) of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the air pollution emission standards required by the regulations prescribed under section 202 of this Act."

Mr. MATHIAS. Mr. President, this is an amendment which would require that every 6 months the Secretary publish automobile pollutant emission levels which have been determined for the various makes and models of cars in the Federal Register.

It makes it possible, therefore, for the public to actively participate in the program for purity and cleaner air by purchasing the cars which are in greatest compliance with the purpose of this act.

Mr. MUSKIE. Mr. President, on the face of the amendment, it is perfectly consistent with the objectives of the bill and the desire to make the performance standards understandable to the public.

I want to indicate to the Senator from Maryland that I am willing to take the amendment to conference, if the Senate approves, with the further understanding that if there are problems as we evaluate the matter, I will take them up with the Senate and with the conferees.

Mr. MATHIAS. Mr. President, I thank the Senator from Maine.

Mr. MUSKIE. Mr. President, I yield back the remainder of my time.

Mr. MATHIAS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland.

The amendment was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Committee on Public Works be discharged from further consideration of H.R. 17255.

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

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 17255.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 17255) to amend the Clean Air Act and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the bill.

Mr. MUSKIE. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and that the text of S. 4358, as amended, be substituted.

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

The question is on agreeing to the amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. MUSKIE. Mr. President, I ask for the yeas and nays on passage.

The yeas and nays were ordered.

LEGISLATIVE PROGRAM

Mr. GRIFFIN. Mr. President, for the convenience of the Senate, I take this time to ask the distinguished majority leader if he can advise us about the schedule for the rest of the day and the rest of the week, if possible.

Mr. MANSFIELD. I would like to take up Calendar No. 1235, S. 3220, the antiobscenity proposal having to do with the receipt of unsolicited material through the mail in the homes of citizens of Montana and the Nation, Rhode Island and elsewhere. It is unsolicited and is an invasion of privacy. The bill was reported unanimously by the Committee on Post Office and Civil Service.

I would like to speak with the distinguished Senator from New Hampshire in connection with Calendar 1047, S. 3765, the so-called Flammable Fabrics Act, which I understand has reached completion or is on the verge of reaching completion.

Then, there is Calendar 1233, S. 3650, concerning crime penalties for transporting explosives, to be followed on Thursday by Calendar No. 1234, S. 4368, the housing and urban development bill, to be followed by Calendar No. 1236, S. 2348, the Federal Broker-Dealer Insurance Corporation, to be followed by Calendar No. 1153, S. 2453, a bill to further promote equal employment opportunities for American workers.

Then, of course, in between there will be some five or six unobjected-to items on the Calendar, having to do with designating a certain week in a certain manner.

Mr. GRIFFIN. Would it be the intention of the majority leader to take up this one bill on obscenity tonight?

Mr. MANSFIELD. I would like to take up the antiobscenity bill, if it meets with the approval of the minority leader and the Senate.

Mr. GRIFFIN. We are trying to reach our Members on this side of the aisle.

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

Mr. MANSFIELD. I yield.

Mr. CURTIS. Can we rely on the fact that the housing bill will not be called up before Thursday?

Mr. MANSFIELD. That is correct.

If it meets with approval, I would like to take up the antiobscenity bill and complete it tomorrow. I understand there are a number of engagements tonight. Is that all right?

Mr. GRIFFIN. Yes.

Mr. BYRD of West Virginia. There will be no further rollcall votes tonight?

Mr. MANSFIELD. On this tentative basis, no. But there will be a vote on the antiobscenity matter tomorrow.

ORDER FOR RECOGNITION OF SENATOR KENNEDY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow morning, immediately following the disposition of the reading of the Journal and the disposition of any unobjected-to items on the legislative calendar, the able Senator from Massachusetts (Mr. KENNEDY) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 2565) to amend the act fixing the boundary of Everglades National Park, Fla., and authorizing the acquisition of land therein, in order to increase the authorization for such acquisitions, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the bill (S. 719) to establish a national mining and minerals policy, with amendments, in which it requested the concurrence of the Senate.

The message further 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. 18127) making appropriations for public works for water, pollution control, and power development, including the Corps of Engineers—Civil, the Panama Canal, the Federal Water Quality Administration, the Bureau of Reclamation, power agencies of the Department of the Interior, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1971, and for other purposes; that the House recede from its disagreement to the amendments of the Senate numbered 17, 20, 21, and 22 to the bill, and con-

curred therein; and that the House receded from its disagreements to the amendment of the Senate numbered 4 to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 13301. An act to provide for the adjustment by the Administrator of Veterans' Affairs, of the legislative jurisdiction over lands belonging to the United States which are under his supervision and control;

H.R. 13519. An act to declare that the United States holds 19.57 acres of land, more or less, in trust for the Yankton Sioux Tribe;

H.R. 14678. An act to strengthen the penalties for illegal fishing in the territorial waters and the contiguous fishery zone of the United States, and for other purposes;

H.R. 15911. An act to amend title 38 of the United States Code to increase the rates, income limitations, and aid and attendance allowances relating to payment of pension and parents' dependency and indemnity compensation; to exclude certain payments in determinig annual income with respect to such pension and compensation; to make the Mexican border period a period of war for the purposes of such title; and for other purposes;

H.R. 16811. An act to authorize the Secretary of the Interior to declare that the United States holds in trust for the Eastern Band of Cherokee Indians of North Carolina certain lands on the Cherokee Indian Reservation heretofore used for school or other purposes;

H.R. 18448. An act to provide mortgage protection life insurance for service-connected disabled veterans who have received grants for specially adapted housing; and

H.R. 18686. An act to authorize the lease and transfer of Burley tobacco acreage allotments.

ENROLLED BILLS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 5365. An act to provide for the conveyance of certain public land held under color of title to Miss Adelaide Gaines of Mobile, Ala.;

H.R. 13543. An act to establish a program of research and promotion for United States wheat; and

H.R. 17795. An act to amend title VII of the Housing and Urban Development Act of 1965.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 13301. An act to provide for the adjustment by the Administrator of Veterans' Affairs, of the legislative jurisdiction over lands belonging to the United States which are under his supervision and control; to the Committee on Labor and Public Welfare.

H.R. 13519. An act to declare that the United States holds 19.57 acres of land, more or less, in trust for the Yankton Sioux Tribe; and

H.R. 16811. An act to authorize the Secretary of the Interior to declare that the United States holds in trust for the Eastern Band of Cherokee Indians of North Carolina certain lands on the Cherokee Indian Reservation heretofore used for school or other purposes; to the Committee on Interior and Insular Affairs.

H.R. 14678. An act to strengthen the penalties for illegal fishing in the territorial waters and the contiguous fishery zone of the United States, and for other purposes; to the Committee on Commerce.

H.R. 15911. An act to amend title 38 of the United States Code to increase the rates, income limitations, and aid and attendance allowances relating to payment of pension and parents' dependency and indemnity compensation; to exclude certain payments in determining annual income with respect to such pension and compensation; to make the Mexican border period a period of war for the purposes of such title; and for other purposes; and

H.R. 18448. An act to provide mortgage protection life insurance for service-connected disabled veterans who have received grants for specially adapted housing; to the Committee on Finance.

H.R. 18686. An act to authorize the lease and transfer of Burley tobacco acreage allotments; to the Committee on Agriculture and Forestry.

NATIONAL AIR QUALITY STANDARDS ACT OF 1970

The Senate continued with the consideration of the bill (S. 4358) to amend the Clean Air Act, and for other purposes.

Mr. GRIFFIN. Mr. President, yesterday the Senator from Maine (Mr. MUSKIE) quoted a paragraph from a letter written by Mr. E. N. Cole. I believe the Senator used the paragraph out of context to support an argument diametrically opposite to the burden of the entire letter.

A copy of the letter was sent to me and to other Senators. I ask unanimous consent that the complete text of the letter be printed in the RECORD.

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

GENERAL MOTORS CORP.,
Detroit, September 17, 1970.

Hon. EDMUND S. MUSKIE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MUSKIE: I was distressed to learn that the Senate Public Works Committee has voted approval of an air pollution bill which would require that 1975 model cars have a 90 per cent reduction in emissions from 1970 levels.

As you may recall, in our meeting August 25 I stated that General Motors does not at this time know how to get production vehicles down to the emission levels that your bill would require for 1975 models. Accomplishment of these goals, as far as we now know, simply is not technologically possible within the time frame required.

Many persons appear to have the impression that your bill seeks to clean up 90 per cent of auto emissions. Instead, the bill actually would require more extreme reductions. Specifically, your bill requires reductions 90 per cent below the low levels already achieved as of 1970. As a result, the following reductions would be required, compared to 1960 pre-control levels: hydrocarbons, 98%; carbon monoxide, 97.5%. As to nitrogen oxides and particulates we would be required to reduce them 90% each within five years after publication of health criteria for them. Moreover, we would have to achieve even greater reductions than these for the various emissions, as the bill requires us to warrant that every car we build remains within the standards for 50,000 miles. Our ability to achieve the required particulates reduction would depend absolutely on the availability of unleaded fuel.

My purpose in writing to you is to emphasize as strongly as possible that General Motors presently does not have the technological capability to make 1975 model *production* vehicles that would achieve emission levels the legislation requires. We are aware that there has been a reluctance among some in Washington to accept this statement.

General Motors has committed itself publicly to eliminating the automobile's part of the pollution problem at the earliest possible date. We are making good progress toward that goal. Some of the experimental engines and control systems in our Research Laboratories have achieved very low emissions under laboratory conditions. This experimental hardware has encouraged us to believe that we will be able to meet the federal government's proposed 1975 standards, which would result in reductions of 95% and 86% in hydrocarbons and carbon monoxide, respectively, compared to pre-control vehicles.

Remarkable low emissions can be achieved with experimental laboratory cars without any regard to mass production manufacturing tolerances, durability, maintenance, cost, and conditions of customer use. It is quite another thing to engineer control systems that can be mass-produced and operated under all conditions, and still meet stringent standards over the lifetime of the vehicle, as would be required by the warranty provisions.

The legislation, in effect, is asking the automobile industry to mass-produce systems developed through space age technology. There is a distinct difference between handbuilding one moon rocket at a time and the requirement that your legislation would impose—manufacturing millions of units that would have the same close tolerances that space hardware demands.

I urge you to consider amending the legislation to give the Secretary of Health, Education and Welfare authority to determine administratively (1) the air quality needs to meet health requirements and (2) whether the technology exists to permit the mass production of long-lived automotive control systems which would perform at this level.

In view of the great interest of members of Congress and the public in this important matter, I am taking the liberty of sending copies of this letter to others who are vitally concerned, as you are, with this subject.

Sincerely,

E. N. COLE.

Mr. COOPER. Mr. President, in connection with the discussion of the section on class action, I ask unanimous consent to have printed in the RECORD an article written by Mr. Joseph Thebodeaus, who I understand is legal adviser to the Governor of Michigan.

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

MICHIGAN'S ENVIRONMENTAL PROTECTION ACT OF 1970: PANACEA OF PANDORA'S BOX

I. INTRODUCTION

Michigan House Bill 3055[1] is the most revolutionary—almost radical—measure to have been enacted in the burgeoning field of environmental law. It creates in every person and entity, irrespective of standing or injury, the right to sue any person or entity for the protection of the environment. First introduced in the Michigan House on April 1, 1969, it was labeled "an April fool joke". Little more than a year later, on "Earth Day", April 22, 1970, it emerged from the House. It passed the Senate on June 26, 1970, and was signed by Governor William G. Milliken

Footnotes at end of article.

on July 27, 1970. It will become effective October 1, 1970.

Professor Joseph L. Sax [2] had been retained by the West Michigan Environmental Action Council [3] to draft the bill. Just how and by whom the decision was made to introduce it on the House side only, through a low-profile member of that body, and under lone Democratic sponsorship into a legislative structure of which Republicans controlled both the Senate and Governor's office, is now left only for conjecture.[4] Any detriment which might have come about as a result of that decision, however, never materialized. Rabid public reaction, aided and abetted by political grandstanding, incident to 3055's passage overcame all obstacles.

The bill owes its enactment to that reaction. The sex appeal of the "environmental crisis" peaked shortly after the bill's introduction. Introduced at any other time, it never would have been the subject of even one committee hearing; introduced when it was, members of the Michigan House were standing in line to have their names appended as co-sponsors. As the legislative process unfolded, it became obvious that anything with a "3055" label would have been passed and signed. This is a classic story of a notion whose time was ripe.

As introduced, and to a lesser extent as passed, 3055 had and has potential problems. At best, it may clog the circuit courts in Michigan for some time; at worst, it threatens to throw them into chaotic disrepair. Moreover, it could hopelessly confuse substantive legal principles of public nuisance, environmental and administrative law.

Governor Milliken was confronted with the dilemma of wanting to support the bill's concept, while having serious reservations about the form and operative effect of some of its provisions. But suggestions for constructive change were not warmly received. In addition to the ordinary inertia which accompanies any attempt at change, several factors surrounding 3055, but totally unrelated to its merits, exacerabated the difficulty.

First, the bill had only Democratic sponsorship. Accordingly, the Governor's support was somewhat suspect.

Second, owing to its sex appeal, and owing to typical knee-jerk "boobus americanus" reaction, 3055 readily assembled a sizeable lay following which generated great pressure in behalf of something, about which it had little or no substantive knowledge. Who, in 1970, could be against the environment? Who, in 1970, could favor pollution? Support was for the measure as introduced, period, without any changes, irrespective of their merits. Either you supported the measure completely, or you were against it completely. The Governor's public posture in attempting to effect constructive change was, therefore, extremely precarious.

Third, from the perspective of legal and technical competence prerequisite to grasping some of the intricacies of the bill, the House Committee on Conservation and Recreation, to whom it was assigned, was lacking.[5]

Fourth, suspicious of support from the Governor's office, reveling in the great attention given the bill and thus to his committee, and convinced that the proposal of any amendment was an attempt to emasculate the measure, the committee chairman took an intractable position that no amendment would be appended in his committee.[6]

Finally, into the consideration of this intricate and complex bill was injected the debilitating influence of party politics in an election year.

These factors would have considerable impact on the direction and legislative intent of 3055.

Footnotes at end of article.

It was with some diffidence, then, that on March 18, 1970, the House Conservation and Recreation Committee hearing was approached with sixteen pages of analysis and suggested amendments to the bill in hand. Apprehension was particularly high since it was known that the design of the "hearing" was to rubber-stamp the Sax version, report it out, and ram it through. Thus, with some skepticism, if not trepidation, the Governor's representative opened his remarks to the committee:

"It should first be noted that the Governor supports this bill in concept. It is only for the purpose of attempting to help in insuring its effectiveness and making it a workable piece of legislation that I am here today. Workable from the private citizens' point of view; from the public administrative agencies' points of view; and most of all workable from the courts' point of view. For it will be, in the final analysis, the courts which will bear the burden of 3055. They are the ones who will have the burden, not only in added caseload, but more importantly in the exercise of their judicial discretion.

"Accordingly, it is my initial observation that, to be workable, this bill must be workable in, for and by the courts. If they are left to drift in a morass of legal vagueries or ill-defined standards, or worse, no standards at all, within which to exercise their powers, then not only will this legislation be unworkable in and of itself, but it will have the more deleterious and long-range effect of impeding whatever progress, albeit inadequate, we are making in the effort to save our environment.[7]"

With those and other preliminary observations having been made, pertaining to the title of the bill, broadening the class of parties-plaintiff, and potential *res judicata* and estoppel problems incident to declaring all actions brought under the bill to be in the name of the "State",[8] several major problems with the Sax draft were singled out. To some extent these problems still exist. Others were corrected by amendment. Others, still, are inherent in the basic concept of the legislation.

For reference an appendix is provided. It contains a draft of Enrolled House Bill 3055 as signed by Governor Milliken on July 27, 1970,[8a] a draft of the bill as introduced on April 1, 1969, and the version of 3055 as introduced in Congress on March 10, 1970.[8b] The draft of the enrolled bill is printed with marginal numbering of each line. In the following pages, references to line numbers will be to this draft.

II. ANALYSIS

A. Constitutional basis

Though introduced in April, 1969, 3055 did not receive any attention until mid-January, 1970, when the House Conservation and Recreation Committee held its first of many public hearings. Paraphrased, the bill provides that:

"Any person or entity shall have the right to maintain an action for declaratory and equitable relief against any person or entity for the protection from pollution, impairment or destruction, of the air, water and other natural resources of the state."

In addition to its foundation in the general police power regulating the public health, safety and welfare, 3055 has a more specific constitutional basis in the Michigan Constitution of 1963:

"The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction." [9]

The operative language is the second sentence, a substantial part of which is incorporated verbatim into the bill.[10] That language has generated much of the controversy surrounding 3055; because of it, 3055, by design, lacks specificity in standard and definition. This is its great weakness.

While it may have sounded suspect to the overwhelmingly lay membership of the House committee to question language in a statute which had been taken virtually verbatim from the Michigan Constitution, it was argued that the same language, without qualification, had a different significance in the context of a statute. The fact that language is drawn verbatim from a constitutional provision, does not necessarily render it workable, or even constitutional, within the confines of a statute. Language as it appears in a constitution is not self-executing.[11] It is only a directive to the legislature, and, as such, contemplates further legislative action to implement it. In this instance, not only does the constitutional language specifically direct the legislature to implement the provision, but the pertinent minutes of the Constitutional Convention clearly reflect the intent that this language was not to be self-executing.[12] It is axiomatic that if constitutional language is not in and of itself self-executing, then the verbatim recitation of the same language in a statutory provision does not effect execution of the constitutional provision and does not, therefore, implement the provision.

Moreover, implementation of any constitutional language requires that it be done in accordance with due process, which implies guidelines or standards within which the statute itself and the constitutional provision can be effectively enforced. Accordingly, adoption by a statute of constitutional language, unqualified by guidelines or standards for enforcement, runs the risk of violating due process.[13] This is true, irrespective of the fact that the courts, as a practical matter in the first instance, might find the unqualified language unworkable.

In particular, although drawn directly from Article 4, § 52, the terms "pollution, impairment and destruction" are relative. They are unrestrictive, unqualified, and undirective. As is noted above, to employ wide-open and ill-defined language in any statute is dangerous; to do so in one of such sweeping ramifications as 3055 could prove disastrous. To some extent each of us is polluting, impairing and destroying our air, water and other natural resources with each breath we take. Presumably, under the parameters of 3055 each of us could be enjoined from drawing another one.[14]

Prerequisite to further consideration of this, its most critical aspect, however, is some examination of the mechanics of 3055.

B. Operative sections

Section 1

Section 1 (lines 9 and 10) states the title of the act. Aside from the political gamesmanship reflected in the appearance in the title of the names of one Democratic House member and one Republican Senator, adoption of section 1 was not accompanied by any great fanfare or controversy; nor is it of any great significance.

Section 2

Section 2(1), (lines 11 to 21) provides that:

"The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the state, any political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction."

As introduced in April, 1969, section 2 was not as inclusive of parties-plaintiff as the enrolled bill reflects. It formerly included only "[t]he attorney general, a city, village or township or a citizen of the state. . . ." This technical change enables every person or entity, including the state or any agency, to sue any other person or entity, including the state or any agency, for the protection of the environment.

It is significant that the state and its agencies are susceptible to injunctive action under the bill. This reflects the increasingly accepted view, and motive behind 3055, that administrative agencies are not doing their job to protect and preserve natural resources. Proponents of the bill argued that these agencies, while entrusted with this responsibility, are not upholding it. It was the expressed intent of the House committee, therefore, that, not only would the polluter be susceptible to actions under the bill, but that the relevant regulatory body could also be subjected to the court's equitable and declaratory jurisdiction.

Section 2(2), (lines 22 to 29) signals this lack of confidence in administrative procedures:

"(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the state or a political subdivision thereof, the court may:

"(a) Determine the validity, applicability and reasonableness of the standard.

"(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court."

The section was inserted in Senate committee, after House passage, and the House later concurred in the Senate amendment. But it could cause problems.

In particular, it has been suggested that section 2(2)(b) may be an unconstitutional delegation of legislative authority, and may violate the principle of separation of powers. It purports to give the courts the authority to write, not merely interpret, the law. Moreover, it enables the courts to superintend administrative prerogative. The Michigan Constitution of 1963 provides that:

"The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."[15]

To some extent the courts, especially activist courts, legislate now; perhaps rightly so, in some cases. But section 2(2)(b) gives more than tacit approval of, or recognition to, this fact. It writes it into law. Unquestionably, the branches of government must work together in a spirit and practice of cooperation.[16] It is also squarely within judicial prerogative, as provided in section 2(2)(a) to, "[d]etermine the validity, applicability and reasonableness of (a) standard."[17] But the courts cannot legislate. They cannot ". . . direct the adoption of a standard. . . ."[18]

"There is a distinction between legislative and judicial acts. The legislature makes the law—courts apply it. To enact laws is an exercise of legislative power; to interpret them is an exercise of judicial power. To declare what the law shall be is legislative; to declare what it is or has been is judicial. The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed. The legislature prescribes rules for the future. The judiciary ascertains existing rights.[19]"

Nor it is legally sufficient to reply that the legislature has vested the courts with authority to adopt appropriate standards. That begs the question and flies directly in the face of improper delegation of legislative authority:

"In view of the recognized division of powers between the different departments of government any attempt to vest the courts with legislative authority would be invalid.[20]"

And further:

"The power given to a court under the Constitution is judicial power. It is beyond the power of the legislature to take from it that judicial power, and it is equally beyond the authority of the legislature to confer upon it power not judicial.[21]"

Moreover, the delegation of rule making power, if possible in the first instance, is nonetheless invalid if it does not set forth standards or guidelines in connection therewith.[22] It might be argued that section 2(2)(b) is no more than an expression of the court's declaratory and equitable jurisdiction. That is, that to ". . . direct the adoption of a standard . . ." is no more than a logical extension of the court's equitable powers. This assumes, however, that the section is applicable, not as a general principle, but only as to each case on an ad hoc basis. But that assumption and interpretation does not track with the literal language which clearly has a much broader applicability. Furthermore, it was the legislative intent that it be a generally applicable principle.[23]

Section 2a (lines 30 to 34) authorizes the court, where it has ". . . reasonable ground to doubt [his] solvency" or ". . . [his] ability to pay any cost or judgment . . .", to require of the plaintiff the posting of a bond not to exceed $500.00. The section is designed to preclude the harassing suit or the action which is totally without merit.[24] The section itself is probably equally unmeritorious. Because of the nominal amount stipulated, any well-intentioned litigant will post it without difficulty. But if he is well-intentioned, then the posting of the bond is unnecessary. On the other hand, if the lawsuit is of an harassing, unmeritorious nature, the nominal bond will not preclude it. It can still be brought without great imposition. Further, the limit on amount is so small that it would not cover any substantial cost that might be invoked.

It would seem more sensible to simply have relied in this regard on the court's equity power. The suit need not be entertained at all. Moreover, in the exercise of its equity jurisdiction, the court can demand the posting of a bond of any size, or any other condition.

Likewise, in the exercise of that jurisdiction, it can award or apportion costs. Accordingly, it would seem that section 3(3) (lines 51 and 52) is also unnecessary.

In addition, as is noted below, if the court is in need of an escape hatch, section 3(2) (lines 48 to 50) provides it through the creation of the role of the master or referee whose findings and recommendations can serve as a basis for dismissal or other disposition of an action, short of a full evidentiary hearing.

Section 2a may, however, be more than just an unnecessary appendage. In setting a fixed maximum dollar limit on the bond which may be required, the section may similarly limit the court's otherwise unlimited equitable power to require a bond in any amount. By singling out a lesser power, the section may constrain the court's otherwise unbridled authority to do equity. This clearly was not the legislative intent. Quite the contrary, notwithstanding that the foregoing observations were made in committee, a representative moved from the House floor that the bond provision be inserted so as to afford the courts authority to prevent the harassing suit. Its effect may be just the opposite.

Section 3

Section 3(1) (lines 35 to 47) was the focal point of much debate, and appropriately so, for it is a key part of the bill. It reads:

"When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts shall apply to actions brought under this act."

In short, it says that the plaintiff must first show a prima facie case of his right to relief.[25] If the defendant chooses to rebut that showing by the presentation of some evidence, the burden shifts back to the plaintiff. In the alternative, the defendant may, ". . . by way of an affirmative defense. . .", prescind from the plaintiff's initial showing and assume the burden of showing that there is ". . . no feasible and prudent alternative . . ." to his conduct. If he takes the latter approach, the defendant must also show that his ". . . conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources . . ." The section concludes that, except as to the "affirmative defense", the principles of burden of proof and weight of the evidence shall be the same for proceedings under 3055 as they are for all other civil actions in the circuit courts.[26]

As originally drafted, section 3(1) did not provide for the alternative defenses. Once the prima facie case had been shown, it placed the burden on the defendant throughout, and required much more of the defendant's proof. It simply stated that, once the plaintiff established his prima facie case:

"[t]he defendant has the burden of establishing that there is no feasible and prudent alternative and that the conduct, program or product at issue is consistent with and reasonably required for promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction."

This may have been asking a bit much of the defendant, notwithstanding the arguments of the proponents of the language. They argued that in most, if not all, environmental lawsuits technological knowledge and expertise are exclusively with the defendant; that he is solely in a position of knowing whether an alternative method to his conduct does or does not exist, and that only he and his evidence can establish that fact.[27]

Thus, the original language was an indirect means of obtaining discovery—and more. Placing the entire burden of proof on the defendant effectively compelled him to come forward with the evidence—for or against himself. This is a complete reversal of common law jurisprudence and civil practice. While there is some merit to the proponents' rationale, the effect of this complete reversal is of questionable advisability. It at least prejudges the defendant's conduct, may be of questionable constitutionality (fifth amendment due process) and begs the question: Is the remedy under the Act a penalty? It is true that technological data is usually exclusively with the defendant. But discovery is available. The de-

Footnotes at end of article.

fendant should not have to prove the plaintiff's case. He should not have to prove the case against himself.

The language of the enrolled bill to some extent corrects this inequity. Instead of requiring the defendant, once a prima facie showing is made, to sustain the entire burden throughout, he is now afforded the option of simply rebutting that showing, or of going beyond and showing that there is " . . . no feasible and prudent alternative . . . " to his conduct. This is in contrast to the Sax draft, by the terms of which he was compelled to show ". . . no feasible and prudent alternative . . ." to his conduct. Under the enrolled bill, if the defendant does not raise the question of "feasible and prudent alternative", it need not be put in issue. In most cases, however, the defendant will ultimately see fit to litigate the question. But he need not, if he is able to overcome the plaintiff's case by way of a lesser showing. This change was made in House committee for the express purpose of alleviating the inequities inherent in the Sax draft.

Nevertheless, there is still a weakness in section 3(1). The terms "feasible and prudent" are left all alone and unqualified. What may be feasible and prudent in one instance, may not be in another. What may be feasible and prudent from one prospective may not be from another. There are technological, economic, geographical, physical, and other kinds of feasibility and prudence. It was argued—ultimately in vain, though for a time some converts were won—that these terms, like "pollution, impairment and destruction", are relative and in need of further definition.

For the short while (2 drafts) during which that argument met with some success, the language "considering all relevant surrounding circumstances and factors" was inserted to qualify "feasible and prudent alternative." It was later removed as the *quid pro quo* for the insertion of the term "unreasonable" to modify "pollution, impairment and destruction." [28]

Hopefully, the courts are still free to consider "all relevant surrounding circumstances and factors." But because of the constructive legislative intent, perhaps not. They certainly are not compelled to do so. Broad, and perhaps vague, as that language is, it might have afforded the courts paradoxically more latitude and more direction in a given instance. Now, presumably, a determination of feasibility and prudence could—and may have to—turn on a single factor to the exclusion of consideration of all others.

In the Sax draft, section 3(1) also required that the defendant's conduct be ". . . reasonably required for promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. . ." Requiring that a particular endeavor of private enterprise be "reasonably required" by the public health, safety and welfare is totally unreasonable and disconsonant with basic human motivation and activity. People do not ordinarily do things because required by the public health, safety and welfare to do them. Their conduct may, and must, be "consistent with" these considerations.

But the test as originally drafted is a greater one than is exacted of public and nonprofit entities. If business were required to show that it is "reasonably required" by the public health, safety and welfare (let alone by "the protection of [the state's] natural resources") then it would be unable to justify its existence. The test was perhaps unconstitutional, totally unworkable, and, at least in total disregard of the ordinary course of business and the conduct of human affairs. In a word, it was academically idealistic and practically unrealistic. As finalized in the enrolled bill, the test now is simply "consistent with" these considerations, and this would seem most satisfactory, necessary and sufficient.

Although not in the least bit controversial, section 3(2) (lines 48 to 50) has some significance. It provides for a master or referee to assist the court. Specifically, to the master or referee is delegated the responsibility of taking ". . . testimony and making a record and a report of his findings to the court in the action." It is the design of this section: to provide for a preliminary screening of actions; to weed out the unmeritorious action; to give the court some basis in fact for doing so, short of a full-blown hearing on the merits; and, in general, to provide the court with an informal precis of the case before or shortly after issue is joined.

Section 3(3) (lines 51 and 52) merely affirms what is inherent in the equitable powers of the court—to apportion costs as justice requires.

Section 4

Section 4(1) (lines 53 to 56) authorizes the court to grant temporary or permanent relief, or impose any conditions required, to protect the air, water and other natural resources.

Section 4(2) (lines 57 to 68) provides that, in doing so, the court may remit the whole matter to an appropriate administrative agency or agencies. There is sound authority for doing so:

"The doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. 'Exhaustion' applies where a claim is cognizable in the first instance by the administrative agency alone; judicial interference is withheld until the administrative process has run its course. 'Primary jurisdiction,' on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. *General American Tank Car Corp. v. El Dorado Terminal Co.*, 308 U.S. 422, 433 (1939).

"No fixed formula exists for applying the doctrine of primary jurisdiction. In every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation. These reasons and purposes have often been given expression by this Court. In the earlier cases emphasis was laid on the desirable uniformity which would obtain if initially a specialized agency passed on certain types of administration questions. See *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co., 204 U.S. 426*. More recently the expert and specialized knowledge of the agencies involved has been particularly stressed. See *Far East Conference* v. *United States, 342 U.S. 570*.[29] "

Proceedings at the administrative level are to be conducted pursuant to the Administrative Procedures Act of 1969,[30] and the court is to retain jurisdiction of the matter pending their completion. At that time, the court is to determine whether "adequate protection" has been afforded the air, water and other natural resources.

During debate in House committee, commercial and industrial interest lobbied strongly for mandatory, rather than discretionary remittance. They argued that somewhere there exists the opportunist on the bench who, for political reasons, will fail to remit a case which should be referred to the administrative level; that there is the judge who will seize upon the right case at the right time (just prior to his own reelection bid), short-circuit the administrative process, and grandstand to the voters.

The conservationists argued, on the other hand and inconsistently with much of their rationale relating to other provisions of the bill, that to require referral would deprive the judge of discretion in the exercise of his equitable powers. More importantly, they argued that to require referral of cases could preclude or stifle decisive action where needed in a given case. In addition, since the judge who voraciously seeks out more of a caseload than he already has is a rarity, (notwithstanding the political opportunist) it seems unlikely that the courts will be at all reluctant to preliminarily remit an appropriate case to the administrative proceedings. This is particularly true, since the court retains jurisdiction pending completion of the proceedings.

The last sentence of section 4(2) and the first sentence of section 4(3) (lines 65 to 71) contain the essence of the philosophy behind 3055. Those two sentences read:

"In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

"Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act."

In addition to affording immediate access to the courts, 3055 provides for immediate review of administrative actions. But it is the kind of judicial review that is significant. Ordinarily, the scope of review is limited to those cases where the administrative decision is:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedures resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.[31]

Direct review under 3055, however, is available irrespective of these considerations and of whether the agency followed established substantive rules, regulations or guidelines. The courts have always had authority to review administrative regulations, and the exercise of discretion thereunder, to protect constitutional rights.[32] But they have not had the authority to pass judgment upon the substantive content of a rule or regulation absent a showing of its unconstitutional operation. Absent a showing of one of the generally accepted bases for overturning administrative decisions, to arm the courts with override authority of the kind granted pursuant to section 4(3) (". . . adjudicate the impact of defendant's conduct. . .") comes perilously close to running afoul of the improper delegation and separation of powers principles noted above.[33]

"The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed.[34] "

Section 4(3), with its directive to the courts to override substantive administrative rules, regulations and guidelines, in adjudicating the effect of a defendant's conduct on the environment, is, by operation, legislating. Moreover, it does so with no provision for standards or guidelines. Needn't the defendant have promulgated notice of the standards which he must meet? Or can he, in lieu of being held accountable to specifically prescribed and promulgated rules and standards, be set adrift in the ill-defined

Footnotes at end of article.

morass of "pollution, impairment or destruction" and "reasonable requirements of the public health, safety and welfare"? The former would seem to be the rule.

"This Court has been specially vigilant in the guardianship of personal and property rights as against uncontrolled delegation of the power to legislate and enforce at will. See the leading case of *Osius v. City of St. Clair Shores, 334 Mich. 693, 698 (48 ALR2d 1079)*:

"There is no doubt that a legislative body may not delegate to another its lawmaking powers. It must promulgate, not abdicate. This is not to say, however, that a subordinate body or official may not be clothed with the authority to say when the law shall operate, or as to whom, or upon what occasion, provided, however, that the standards prescribed for guidance are as reasonably precise as the subject matter requires or permits. [35] ' "

And acceptance of the rule is becoming widespread:

"There is growing recognition among the state courts of the healthy principle that a person who relies in good faith on an agency rule should be held harmless from loss if that rule is later held invalid, or is amended.[36]"

Section 4(4) is a technical override of section 64 of the Administrative Procedures Act of 1969 [37] which, in conjunction with section 4, could permit the vesting of jurisdiction, upon review of the administrative proceedings, in a court other than that which first took cognizance of that matter. Section 4(4) insures that judicial review will be conducted by the court originally taking jurisdiction.

Section 5

Section 5(1) (lines 79 to 88) provides for intervention at both the administrative and judicial review levels. Its scope is as all-inclusive as is that of parties-plaintiff and defendant under section 2.

Section 5(2) (lines 89 to 95) purports to superimpose on the administrative agency the same directive as is given the court under section 4(3). That is, an override of duly established and promulgated agency standards and guidelines is provided. Accordingly, the analysis of section 4(3) is equally applicable to this section. The only distinction is that this section is expressly operative at the administrative level, (and arguably operative upon judicial review) whereas, section 4(3) is expressly operative upon judicial review.

Of the remaining sections 5(3) (lines 96 and 97), 6 (lines 98 and 99), and 7 (line 100), 5 (3) is designed to prevent a multiplicity of suits by stating that the doctrines of res judicata and estoppel are applicable. It would be seem that, under its equitable power, the court could invoke them in any event.

Section 6 states that 3055 is supplementary to, not supplantive of, existing administrative procedure.

Section 7 provides the effective date of October 1, 1970.

III. IN RETROSPECT

A. Reasonable pollution?

References have been made to the lack of definition of terms and preciseness of language in 3055. With no small amount of effort were some of the Governor's proposed changes inserted and retained in the bill. Other changes were also made. Perhaps a sufficient number of constructive changes were effected to have constituted a decent average in most leagues.

But it will forever be a cause of great chagrin that the term "unreasonable" was stricken from the final draft after it reached the floor of the House.[38] The manner in which it was removed is likewise a source of concern and a sad commentary on legislative processes. The term was not used in the Sax draft. It was inserted in House committee. As has been noted, the qualifying language relating to "feasible and prudent alternative" had been deleted by agreement of all concerned in exchange for retaining "unreasonable".[39]

Nonetheless, one Democratic Representative, who, as chairman of the House committee, had been privy to all drafting sessions, moved, as the bill was reported from committee onto the calendar, that "unreasonable" be stricken. He had rallied the number of his Democratic colleagues sufficient to obtain the necessary minimum 56 votes and the word was excised.[40] Enough attention was thereby forcused on it that any attempt to reinsert the word would have been an exercise in futility. Public recation, without understanding the full significance of the term and spurred by conservations paranoia,[41] misguidedly brought sufficient pressure to bear to keep it out.

Thus, whereas an agreement had been made by all principals involved, one questionably motivated act undid it all. Whereas a fairly sound model had been prepared, the measure may now be of questionable constitutionality for lack of definition.

"[A]ny statute which subjects those who violate its terms to criminal prosecution or to an action for damages must give [sufficiently definite] notice. Even a statute subjecting violators merely to injunction or to deprivation of a prospective gain should give notice where the secondary effect of such a sanction is to destroy the value of an existing investment of time or money." [42]

In any event the courts are now deprived of any handle, which they might otherwise have had, upon which to rationally, and with precedent, decide the matters which come before them under the act.

This is particularly true, since, in reviewing cases pursuant to 3055, the courts are directed to prescind from administrative rules, regulations, guidelines, standards and actions.[43] As such, they have no criteria upon which to base their decisions. The terms "pollution, impairment and destruction" are in desperate need of qualification. It was strongly felt that the term "unreasonable" afforded the semblance of definition.

The action of once having expressly inserted the word "unreasonable" in the bill and subsequently removing it, may give rise to a constructive legislative intent that the courts are to regard "pollution, impairment and destruction" in the absolute; that, notwithstanding their broad equity powers, they are precluded from adopting a "rule of reason".

Is there such a thing as reasonable pollution? The conservationists and the chairman of the House committee answered, "No." It can only be hoped—for the sake of plaintiffs, defendants, commerce, industry, the courts and all of us—that, notwithstanding the controversy over the term "unreasonable" and the ultimate resolution of that controversy, the courts find that answer erroneous.

B. The public trust

A concept to which much significance is attached in 3055 is that of "the public trust". As first introduced, the Sax draft used the term in several different contexts. In section 2 it refers to ". . . public trust in the natural resources of the state". In section 3 the phrase is ". . . natural resources or the public trust of the state". In section 4 it speaks simply of "the public trust".

Unquestionably, Professor Sax knew what he meant by the term. But the confusing and different contexts in which it was used and the complexity of the concept itself, as Sax defined it, was disconcerting. Moreover, there are different conceptions of public trust. Accordingly, a motion was made in House committee that it be stricken. As a compromise, an expression consistently used throughout the enrolled bill was decided upon. Now the act speaks in terms of the ". . . air, water, or other natural resources or the public trust therein".

Sax urges a very special significance to the term. He states that:

"Confusion has arisen from the failure of many courts to distinguish between the government's general obligation to act for the public benefit, and the special, and more demanding, obligation which it may have as a trustee of certain public resources." [44]

Presumably, as was said at the outset, the state's authority to regulate these matters stems from its police power.

But to Sax's thinking, the public trust is obviously something very distinct from the protection of the air, water and other natural resources through the police power.

Among its salient characteristics are the public nature of the resource and use thereof, the fact that the use is not to be substantially altered, and the fact that it cannot be alienated to a private interest for a consideration (quasi-private condemnation of resources). Thus, it differs substantially from the preservation and protection to be afforded the state's natural resources under the police power. It connotes a trusteeship—a fiduciary duty to the public.

The public trust has received recognition, and in fact, is still in its embryonic stages, in the courts. It is a principle, the thrust of which is to preserve to the people their natural surroundings in the highest quality possible commensurate with the normal conduct of human affairs. Incidentally, it has made the people aware of their surroundings and made administrative agencies responsive to the people. It has afforded public access to administrative determinations. It strikes at the heart of the low-visibility agency decision making. Says Sax:

"[P]ublic trust law is not so much a substantive set of standards for dealing with the public domain as it is a technique by which courts may mend perceived imperfections in the legislative and administrative process. The public trust approach which has been developed . . . and the exercise in applying that approach to existing situations . . . demonstrate that the public trust concept is, more than anything else, a medium for democratization.[45]"

III. CONCLUSION

That is where 3055 began. That is its underlying rationale. To democratize environmental law. To take a step, legislatively, into an area into which up to now only the courts have ventured. To short cut the process. To codify into a statute what has been only dicta in the cases that the people are the very real beneficiaries of a trust, the corpus of which is their environment. Will it work?

As 3055 left House committee with most of his recommended changes adopted, Governor Milliken gave this assessment:

"This bill certainly will not be the total answer to all our environmental problems. It is not a panacea. It will not be the total answer to all our environmental problems. But, it will serve to bring some of them into focus; perhaps more quickly than they are now.

"It will also, in some cases, produce quicker action from those agencies and instrumentalities of state and local government whose responsibility it is to protect the environment, as well as from the polluters themselves.

"Most importantly, it will permit direct citizen involvement in bringing much of this about, and hopefully, in so doing, will produce an increasing consciousness and conscience in every citizen of this state concerning the protection and preservation of his environment. For, ultimately, the quality of our environment is, not only the concern, but the responsibility, of every citizen.

"If this measure takes us one step closer to

Footnotes at end of article.

that realization it will have been wortn the effort of its enactment.[48]"

3055 may do this and much more. Its concept is bold, though its execution might have been better. If it can withstand constitutional attack, or if it can be satisfactorily amended to provide for more definitive standards, it could revolutionize environmental law. The potential ramifications are virtually unlimited. Which of them will be realized, and to what extent, must await case-by-case development under the Act.

The businessman-industrialist—especially in Michigan—awaits in frightened expectation; the activist-conservationist in childlike frenetic excitation.

FOOTNOTES

[1] *Mich. Comp. L. of 1948*, § 691.1201–07 (Act 127, P.A. 1970).

[2] Professor of Law, University of Michigan. A.B., 1957, Harvard University; J.D., 1959, University of Chicago. Has taught at the University of Colorado and at the University of California at Berkeley. In Washington, D.C., from July, 1969, to July, 1970, he studied, on a Ford Foundation grant, the use of law in environmental quality controversies.

[3] An organization, in turn comprised of 50 or more organizations, the natures of which span the spectrum from local PTAs, to black unity councils, to Kiwanis clubs, to garden clubs to conservation groups, WMEAC was formed in the Spring of 1968 at the initiation of Mrs. Willard E. Wolfe of Grand Rapids. Its stated purpose is to coordinate information, to educate the public, and "take whatever action is necessary" to protect the environment. This action has largely taken the form of encouraging legal and legislative action and generating support therefor. WMEAC has been most successful in enlisting the support of otherwise not primarily conservation oriented groups. It first confronted Professor Sax on January 28, 1969, with its problem: a need to effect governmental action in the protection of the environment. 3055 is the result.

[4] Representative Thomas J. Anderson, Democrat of the 28th House District, introduced the bill as its sole sponsor. An engineer by profession, after 10 years of local political activity, he was first elected to the House in 1964. He was reelected in 1966 and 1968 and stands for reelection in November, 1970. He is co-chairman of the House Conservation and Recreation Committee. *Mich. Man. 1969–70* (Mich. Dept. Ad.) at 191.

[5] The House Committee on Conservation and Recreation is comprised of 13 members, one of whom is a member of the bar. *Mich. Leg. Hdb. 1969–70*. (Comp. by Kenyon and Thatcher, 1969). Since the bill was labeled a conservation measure, it was assigned to that committee. More appropriately it might have been referred to House Judiciary.

[6] Representative Warren N. Goemaere, Democrat of the 72nd House District, although technically designated "co-chairman", is chairman of the committee for the 1970 session. Like Anderson, he was first elected to the House in 1964, was reelected in 1966 and 1968, and stands for reelection in November, 1970. *Mich. Man. 1969–70, supra*, Note 4, at 197.

[7] Testimony of the author, Hearings on H.B. 3055 before House Conservation and Recreation Committee, *75th Mich. Leg.*, Mar. 18, 1970 (unreported).

[8] See Appendix, *infra*, House Bill 3055 as introduced April 1, 1969, § 2. The purpose for removing the reference to the "State" in the enrolled bill was to avoid potential res judicata or estoppel problems; to avoid a construction that would preclude an action where a prior suit had litigated the same issue on similar or identical facts, but through a different party-plaintiff. Though maintained in the names of distinct parties-plaintiff, because the cases were declared to be in "the name of the State", the legal identity of the single party—the State—might have been imputed to the plaintiffs.

The reference to the doctrines of res judicata and estoppel in the enrolled bill (See Appendix, *infra*, § 5(3), (lines 96 and 97) is to the customary application of those doctrines.

[8a] *Mich. Comp. L. of 1948*, § 691.1201–07 (Act 127, P.A. 1970).

[8b] Environmental Protection Act of 1970, S3575, 91 Cong. 2nd sess., 1970.

[9] *Mich. Const.*, art. 4, § 52.

[10] See Appendix, *infra*, Enrolled House Bill 3055, §§ 1, 3(1), 4(1), 4(2), 4(3), 5(1) and 5(2).

[11] *McDonald v. Schnipke*, 380 Mich, 14, 22, 25, 26, N.W. (1968).

[12] *Mich. Const. Con. 1961—Official Record* (Knapp. ed.) Committee Proposal 125, Vol. II, at 2602–05. Mr. Millard reported as follows (at 2602):

"The proposed section submitted herewith is merely declaratory and has no automatic self executing quality. The wording has been examined by Professor William Pierce of the law school of the University of Michigan, who asserts that the section would not alter existing water law in any respect, either in riparian rights, meander lines or otherwise. Nor would the declaration of a public paramount interest in the air interfere with the traditional common law doctrine of the control of air space above real property. Nor would existing vested rights in property holders of the various forms of 'natural resources' be in any fashion disturbed."

The consequence of adoption of the provision, in short, does not lie in any alteration of existing law.

Mr. Hatch reemphasized the fact that the language is not self executing (at 2603):

"I want to make it perfectly clear that this amendment is merely declaratory. It has no automatic self executing qualities."

And Mr. Millard confirmed this again (at 2605):

"We have to have some protection against the waste of our natural resources. We do that now. Our legislature does have control over the natural resources, the use of them, and I feel that in the future that this is more or less just a memorializing of the legislature, that they have the right, the power. We are not giving them any power. They have that power. We are just telling them to look out into the future for our natural resources, the air and the water, and to make some regulations so that they will not be used up for the other generations that are to follow."

[13] *McKibbin v. Corp. & Sec. Comm.*, 369 Mich., 69, N.W. (1963). Although speaking of the delegation of authority to an agency, the rule of *McKibbin* is equally—and more—applicable to a delegation to the courts.

[14] *Time Mag.*, August 24, 1970, at 37. The first state law of its kind in the U.S., the Michigan statute could inspire a flurry of odd-ball suits. If a Detroit resident dislikes auto pollution, for example, he might well ask a court to ban all downtown traffic.

[15] *Mich. Const.*, art. 3, § 2.

[16] See *People v. Piasecki*, 333 Mich. 122, 52 N.W. 2d 626 (1952); *Local 321, State, County and Municipal Workers of America v. Dearborn*, 311 Mich. 674, 19 N.W. 2d 140 (1945); and Parker, "Separation of Powers Revisited", 49 *Mich. L. Rev*, 1009 (1951).

[17] *Lewis v. Grand Rapids*, 222 F.Supp. 349, 378 (W.D. Mich. 1963).

[18] *Northwood Properties Company v. Royal Oak City Inspector*, 325 Mich. 419, 39 N.W. 2d 25 (1949).

[19] *In re Consolidated Freight Co.*, 265 Mich. 340, 343, 251 N.W. 431, (1933).

[20] *Goethal v. Kent County Supervisors*, 361 Mich, 104, 113, 104 N.W. 2d 794 (1960).

[21] *Johnson v. Kramer Freight Lines*, 357 Mich. 254, 257–8, N.W. (1959).

[22] *McKibbin, Supra*, Note 13.

[23] Sec. 2(2) was added in the Senate Conservation and Tourist Industry Committee. Senator Basil W. Brown, Democrat of the 6th Senatorial District, proposed and moved the adoption of the language. A most able lawyer, Senator Brown later informally speculated that the language may not survive constitutional attack.

[24] See Appendix, *infra*, Environmental Protection Act of 1970, S. 3575, 91 Cong., 2d Sess. § 4(e) (1970), which provides:

"No bond shall be required by the court of the plaintiff: *Provided*, That the court may, upon clear and convincing evidence offered by the defendant that the relief required will result in irreparable damage to the defendant, impose a requirement for security to cover the costs and damages as may be incurred by defendant when relief is wrongfully granted: *Provided further*, That such security shall not be required of plaintiff if the requirement thereof would unreasonably hinder plaintiff in the maintenance of his action or would tend unreasonably to prevent a full and fair hearing on the activities complained of."

Quite clearly the provision says nothing, except that the court may or may not, in its discretion, require bond. The language in Enrolled Bill 3055 was appended on the floor of the House, it having been decidedly rejected in House Committee.

[25] Black's Law Dictionary 1353 (4th ed. 1951) says of *prima facie case* that: "A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side."

[26] *Mich. Gen. Ct. R.* 601 states: "The burden of proof, presumptions, judicial notice, and other rules of evidence shall be according to the common law except as modified by statute or court rule."

Thus, the "exception" for the "affirmative defense" is somewhat ambiguous. If in fact section 3(1) makes an exception from the common law rule that the burden of establishing such a defense is on its proponent, it fails to state what rule shall govern. Accordingly, an assumption must be made that no "exception" is in fact created.

[27] Professor Sax strongly urges this point. See Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", 68 Mich. L. Rev. 473 (1970).

[28] On April 14, 1970, a meeting was held in the Washington, D.C. office of Professor Sax. In attendance were: Representatives Anderson and Goemaere, Senator Gordon Rockwell, Chairman of the Senate Conservation and Tourist Industry Committee, Mr. James L. Rouman, then Executive Director of the Michigan United Conservation Clubs, Professor Sax, and the author. With all present concurring, the author agreed to the deletion of this language and, in turn, Professor Sax agreed that the word "unreasonable" remain in the bill. Representative Goemaere subsequently moved that the word "unreasonable" be stricken—see pp 20–22, *infra*.

[29] *United States v. Western Pacific R.R. Co.*, 352 U.S. 59, 63–4 (1956).

[30] *Mich. Comp. L. of 1948*, §§ 24.201–24.313.

[31] Id. § 24.306.

[32] *Lewis v. Grand Rapids, supra*, at Note 17.

[33] Cf. pp. 8 and 9, Notes 15–22, *supra*.

[34] *In re Consolidated Freight Co., supra*. Note 19, at 343.

[35] *O'Brien v. State Hwy Commr*, 375 Mich 545, 557, N.W. (1965).

[36] Cooper, *State Administrative Law*, 267 § 4(D) (1965).

[37] *Mich. Comp. L. of 1948*, § 24.264.

[38] See S. 3575, 91 Cong., 2d Sess. (1970), §§ 2(b), 3(a) and 4(a), wherein the word "unreasonable" appears. The insertion of the term was made by staff personnel before in-

troduction to the U.S. Senate Committee on Commerce.

[39] Cf. pp. 14 and 15, Note 28, *supra*.

[40] The Michigan House has 110 members. Thus, 56 votes were needed to carry Representative Goemaere's motion. The House of the 75th Legislature has a constituency of 57 Democrats and 53 Republicans, *Mich. Leg. Hdb. 1969–70*. The record role call on Representative Goenaere's motion reflects 51 Democrats and 5 Republicans voting "Yea", H. Journal No. 57, 75th Leg. Reg. Sess. (1970), roll call No. 335 at 1296.

[41] The Michigan United Conservation Clubs, through Dr. Frederick L. Brown, its president, was signally effective here. Spooked by a prior legislative hassle of some years before when the word "willful" crept into a conservationist piece of legislation, Brown vehemently and vociferously opposed the term "unreasonable." From his testimony, and specific references to the fact, it was clear that Brown and other conservationist interests erroneously imputed to the word the same connotation as is commonly ascribed to "willful".

[42] *62 Harv. L. Rev.* 77, 78–9 (1948).

[43] Cf. pp 8, 9, 17–19, Notes 15–22, 31–36.

[44] Sax, *supra*, Note 27 at 478.

[45] Id. at 509.

[46] Press release, Governor William G. Milliken, Mar. 31, 1970.

From the perspective of both Legal Advisor to Governor William G. Milliken and ad hoc counsel to the House committee which drafted the measure, the author affords an incisive analysis of Michigan House Bill 3055, The Environmental Protection Act of 1970, effective October 1, 1970. The Michigan Legislature maintains no permanent record of its committee hearings or floor debate. Accordingly, through his observations and recollections, the author here provides the only recorded history, with a focus on legislative intent, of the passage of this remarkable Act. Since the Michigan version is expected to be the model for the enactment of similar measures in other states (now pending in Colorado, Massachusetts, New York, Pennsylvania, Tennessee and the U.S. Congress, and expected to be introduced in Texas and California) and since there promises to be much litigation brought pursuant to the Act, this article should be of particular value to legislative members and administrative officials, as well as to corporate, government and private attorneys.

Appendix

(Enrolled House Bill No. 3055 as signed by Governor William G. Milliken on July 27, 1970 (Act 127, P.A. 1970, Mich. Comp. L. 1948, §§ 691.1201–07))

An Act to provide for actions for declaratory and equitable relief for protection of the air, water and other natural resources and the public trust therein; to prescribe the rights, duties and functions of the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity; and to provide for judicial proceedings relative thereto.

The People of the State of Michigan enact:

Sec. 1. This act, shall be known and may be cited as the "Thomas J. Anderson, Gordon Rockwell environmental protection act of 1970".

Sec. 2 (1) The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction.

(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the state or a political subdivision thereof, the court may:

(a) Determine the validity, applicability and reasonableness of the standard.

(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Sec. 2a. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in any action brought under this act the court may order the plaintiff to post a surety bond or cash not to exceed $500.00.

Sec. 3. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts shall apply to actions brought under this act.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.

(3) Costs may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction.

(2) If administrative, licensing or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. In so remitting the court may grant temporary equitable relief where necessary for the protection of the air, water and other natural resources or the public trust therein from pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

(3) Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this act.

(4) Where, as to any administrative, licensing or other proceeding judicial review thereof is available, notwithstanding the provisions to the contrary of Act No. 306 of the Public Acts of 1969, pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Sec. 5. (1) Whenever administrative, licensing or other proceedings, and judicial review thereof are available by law, the agency or the court may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, water or other natural resources or the public trust therein.

(2) In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multipilicity of suits.

Sec. 6. This act shall be supplementary to existing administrative and regulatory procedures provided by law.

Sec. 7. This act shall take effect October 1, 1970.

This act is ordered to take immediate effect.

House Bill No. 3055, as Introduced April 1, 1969

A bill to provide for action for declaratory and equitable relief for protection of the air, water and other natural resources of the state; to prescribe the duties of the attorney general, political subdivisions and the citizens of the state; and to provide for judicial proceedings relative thereto.

The people of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "natural resource conservation and environmental protection act of 1969".

Sec. 2. The attorney general, a city, village or township or a citizen of the state may maintain an action for declaratory and equitable relief in the name of the state aganist any person, including a governmental instrumentality or agency, for the protection of the air, water and other natural resources of the state from pollution, impairment or destruction, or for protection of the public trust in the natural resources of the state.

Sec. 3 (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is reasonably likely to pollute, impair or destroy the air, water or other natural resources or the public trust of the state, the defendant has the burden of establishing that there is no feasible and prudent alternative and that the conduct, program or product at issue is consistent with and reasonably required for promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a report to the court in the action. The costs thereof may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are

required to protect the public trust or air, water and other natural resources of the state from pollution, impairment or destruction.

(2) If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, program or product, the court may remit the parties to such proceedings. In so remitting the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the natural resources or public trust of the state. In so remitting the court shall retain jurisdiction of the action pending completion thereof, for the purpose of determining whether adequate consideration has been given to the protection of the public trust and the air, water or other natural resources of the state from pollution, impairment or destruction, and, if so, whether the agency's decision is supported by the preponderance of the evidence upon the whole record.

(3) If such consideration has not been adequate, the court shall adjudicate the impact on the public trust and air, water and natural resources of the state in accordance with the preceding sections of this act, or where, as to any such administrative, licensing or other proceeding, judicial review thereof is available, the parties shall be remitted to the processes of such review as augmented by section 5, and upon the vesting of jurisdiction in any other court of the state, the court may dismiss the action brought hereunder without prejudice to the parties.

Sec. 5. (1) In such administrative, licensing or other proceeding, and in a judicial review thereof made available by law, the attorney general, a city, village or township, or a citizen of the state may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct, programs or products which may have the effect of impairing, polluting or destroying the public trust or air, water or other natural resources of the state.

(2) In any such administrative, licensing or other proceeding, the agency shall consider the alleged impairment, pollution or destruction of the public trust of air, water or other natural resources of the state and no conduct, program or product shall be authorized or approved which does, or is reasonably likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

(3) In an action for judicial review of any proceeding described in subsection (2), the court, in addition to any other duties imposed upon it by law, shall grant review of claims that the conduct, program or product under review has, or is reasonably likely to impair, pollute or destroy the public trust or the air, water or other natural resources of the state, and in granting such review it shall follow the standards and proceedings set forth in this act in addition to the review authorized by Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

Sec. 6. In an action where a plaintiff or intervenor seeking judicial adjudication as provided by this act has failed to intervene in any administrative, licensing or other such proceedings, the court may remit such plaintiff or intervenor to such proceeding for amplification of the record therein, and may order the granting of intervention and the granting of review therein as provided in section 5. However, where intervention was available in such administrative, licensing or other proceedings, and where the plaintiff or intervenor seeking judicial adjudication hereunder wilfully and inexcusably refused intervention therein, the court may dismiss the action with prejudice to the plaintiff or intervenor.

S. 3575

(Environmental Protection Act of 1970, 91st Cong., 2d Sess., introduced Mar. 10, 1970, by Senators PHILIP A. HART and GEORGE MCGOVERN)

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

SEC. 2. (a) The Congress finds and declares that each person is entitled by right to the protection, preservation, and enhancement of the air, water, land, and public trust of the United States and that each person has the responsibility to contribute to the protection and enhancement thereof.

(b) The Congress further finds and declares that it is in the public interest to provide each person with an adequate remedy to protect the air, water, land, and public trust of the United States from unreasonable pollution, impairment, or destruction.

(c) The Congress further finds and declares that hazards to the air, water, land, and public trust of the United States are caused largely by persons who are engaged in interstate commerce, or in activities which affect interstate commerce.

SEC. 3. (a) Any person may maintain an action for declaratory or equitable relief in his own behalf or in behalf of a class of persons similarly situated, for the protection of the air, water, land, or public trust of the United States from unreasonable pollution, impairment, or destruction which results from or reasonably may result from any activity which affects interstate commerce, wherever such activity and such action for relief constitute a case or controversy. Such action may be maintained against any person engaged in such activity and may be brought, without regard to the amount in controversy, in the district court of the United States for any judicial district in which the defendant resides, transacts business or may be found: *Provided,* That nothing herein shall be construed to prevent or preempt State courts from exercising jurisdiction in such action. Any complaint in any such action shall be supported by affidavits of not less than two technically qualified persons stating that to the best of their knowledge the activity which is the subject of the action damages or reasonably may damage the air, water, land, or public trust of the United States by pollution, impairment, or destruction.

(b) For the purpose of this section, the term "person" means any individual or organization; or any department, agency, or instrumentality of the United States, a State or local government, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States.

SEC. 4. (a) When the plaintiff has made a prima facie showing that the activity of the defendant affecting interstate commerce has resulted in or reasonably may result in unreasonable pollution, impairment, or destruction of the air, water, land, or public trust of the United States the defendant shall have the burden of establishing that there is no feasible and prudent alternative and that the activity at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the paramount concern of the United States for the protection of its air, water, land, and public trust from unreasonable pollution, impairment or destruction.

(b) The court may appoint a master to take testimony and make a report to the court in the action.

(c) The court, or master, as well as the parties to the action, may subpoena expert witnesses and require the production of records, documents, and all other information necessary to a just disposition of the case.

(d) Costs may be apportioned to the parties if the interests of justice require.

(e) No bond shall be required by the court of the plaintiff: *Provided,* That the court may, upon clear and convincing evidence offered by the defendant that the relief required will result in irreparable damage to the defendant, impose a requirement for security to cover the costs and damages as may be incurred by defendant when relief is wrongfully granted: *Provided further,* That such security shall not be required of plaintiff if the requirement thereof would unreasonably hinder plaintiff in the maintenance of his action or would tend unreasonably to prevent a full and fair hearing on the activities complained of.

SEC. 5. The court may grant declaratory relief, temporary and permanent equitable relief, or may impose conditions on the defendant which are required to protect the air, water, land, or public trust of the United States from pollution, impairment, or destruction.

SEC. 6. This Act shall be supplementary to existing administrative and regulatory procedures provided by law and in any action maintained under the Act, the court may remand the parties to such procedures: *Provided,* that nothing in this section shall be deemed to prevent the granting of interim equitable relief where required and so long as is necessary to protect the rights recognized herein: *Provided further,* That any person entitled to maintain an action under this Act may intervene as a part in all such procedures: *Provided further,* That nothing herein shall be deemed to prevent the maintenance of an action, as provided in this Act, to protect the rights recognized herein, where existing administrative and regulatory procedures are found by the court to be inadequate for the protection of such rights: *Provided further,* That, at the initiation of any person entitled to maintain an action under the Act, such procedures shall be reviewable in a court of competent jurisdiction to the extent necessary to protect the rights recognized herein: *and provided further,* That in any such judicial review the court shall be bound by the provisions, standards, and procedures of sections 2, 4, and 5 of this Act, and may order that additional evidence be taken with respect to the environmental issues involved.

Mr. YOUNG of Ohio. Mr. President, the legislation we are considering today may well be the most important environmental protection measure ever before this Congress. Its provisions could mean that, within 5 years, the air in our cities will be fit to breathe, no longer endangering the health of our citizens.

To accomplish this vitally necessary task will be difficult. With our factories and our automobiles we have utterly befouled our urban air. To clean it will take bold and drastic steps. This bill provides such steps.

National air quality standards will be set at the level necessary to protect public health, and States and regions would be required to attain that quality of air within a statutory deadline. While States and regions would continue to have the primary responsibility for implementing those standards, and enforcing timetables and emission requirements on particular sources, the Secretary of Health, Education, and Welfare would have backup authority to do any task a State was unwilling or unable to do itself.

One important aspect of this bill deals with emissions of hazardous substances. The definition of substances subject to this section has been tightly drawn by

the committee, so that only air pollution agents which even in trace amounts cause or contribute to an increase in mortality or serious irreversible or incapacitating reversible damage to health, will be included.

The provision requires national emission standards for such substances. The standard must preliminarily be set at zero for any substance the Secretary finds hazardous, putting the burden on the emitter to show that a higher emission level will not be hazardous. It was not intended by the committee that a technically unachievable zero emission level be set unless the substance is so dangerous that any emissions endanger health. Only in that case would emissions be prohibited, a step which conceivably could force plants to suspend operations. Every possible procedural safeguard is available to an affected industry under the hazardous substance provision: the protections of the Administrative Procedures Act, a public hearing in which to make its case before the Secretary, and judicial review of any standard or order to abate to which it takes exception.

The bill also sets a dramatic goal for controlling emissions from new automobiles. By 1975, the emissions from cars must reach the levels which the National Air Pollution Control Administration has projected are necessary to protect the public health. To avoid disrupting a major industry, which contributes much to the national economy, the committee approved a mechanism for extending the deadline 1 year if the automobile industry, having made all good faith efforts, is unable to meet the standards by 1975.

This is not an arbitrary provision. It reflects the understanding of control technology the committee gained through extensive hearings and meetings with the auto industry and the National Air Pollution Control Administration. The members of the committee were confident that this deadline can be met, and that a clean car can be achieved without wrecking the auto industry.

In this bill, $1,190 million is authorized for the costs of research and air pollution control. This is only the Federal commitment. The States and cities must also heavily involve themselves in this effort, as must the private sector.

S. 4358 is the product of much work by the Subcommittee on Air and Water Pollution, and by the parent Committee on Public Works, of which I am a member. It is a tough bill which will give us, finally, the tools to clean up this Nation's air.

Mr. NELSON. Mr. President, the United States today is at a crucial point in the battle to halt the continuing deterioration of our physical surroundings and to begin to provide improved quality of life for all our citizens and their descendants. As the widespread increase in smog episodes and oil-clogged beaches demonstrated this summer, environmental pollution is a national issue which reaches all communities, regardless of size and location, and touches each of our lives, regardless of age or social status. Poisoned air, contaminated water, and despoiled land rob each one of us of a treasured national heritage and threaten our health and physical property. To reverse this trend, it will require the unified commitment for environmental quality of each one of us—individual citizens, public officials, and the industrial community.

On his 80th birthday, Walter Lippmann gave evidence of his continued prescience and ability to accurately survey our national condition when he noted:

> Our only hope is that a sufficiently large number of people will become actively concerned about the destruction of the environment . . . If a sufficiently powerful group of people understand . . . (they) can lead the rest.

Mr. President, today the Senate of the United States is in a position to offer this Nation the leadership needed to succeed in the fight to halt air pollution. Senator Edmund S. Muskie and the Senate Public Works Committee have brought to the floor of the Senate the toughest piece of environmental legislation ever considered by Congress.

S. 4358, the National Air Quality Standards Act of 1970, could mark the turning point in the struggle against air pollution. The 1975 deadlines for compliance with national air quality standards and the development of a clean car are essential to the protection of public health. The new enforcement provisions in the act mean business and will insure compliance with those deadlines.

I especially want to congratulate Senator MUSKIE—not only for his leadership in writing the new bill, but also for bucking the strong tide of industry opposition to this legislation. Senator MUSKIE, Chairman RANDOLPH, and the other members of the committee have offered Americans new hope for a clean and healthy environment.

As Senator MUSKIE stated yesterday:

> The legislation we take up today provides the Senate with a moment of truth: a time to decide whether or not we are willing to let our lives continue to be endangered by the wasteful practices of an affluent society, or whether we are willing to take the difficult but necessary steps to breathe new life into our fight for a better quality of life.

I emphatically agree. This legislation is a test of our commitment to providing national leadership and national policy for air pollution control.

Air pollution directly attacks the health of all Americans. This bill before us is a firm congressional statement that all Americans in all parts of the Nation should have clean air to breathe, air which does not attack their health. And this bill sets the goal of achieving clean air in the Nation within the next few years.

The responsibility of this body and of the Congress is to determine what the public interest requires to protect the health of tough decisions and equally rigorous challenges. But the situation is of such a critical nature that we cannot shirk this responsibily. It is the proper time to state the goals and outline for clean air. This bill is an acceptance of this responsibility to protect the public health and states an outline for clean air in clear, precise terms.

It is particularly encouraging to see that S. 4358 recognizes the motor vehicle as the most serious single cause of air pollution in the country. Earlier this year I proposed that January 1, 1975, be the national goal for the manufacture and sale of nonpolluting automobile engines, that all air pollution control devices on motor vehicle engines have an extended warranty to make sure that they function after the vehicle is on the road, and that individual States be allowed to set stricter emission standards for motor vehicles than required by the Federal Government. The Public Works Committee has taken this same basic position.

Contrary to the statements of industry, this bill does not dictate technology. The measure simply states that it shall be the national policy to have a clean automobile engine in 5 years. It issues a public challenge to the automobile industry to devote their vaunted technological and manufacturing resources to the task of meeting this goal. This is a challenge which is certainly proper for Congress to issue. It is a statement of national policy which cannot be compromised by the Automobile Manufacturers Association.

If the Senate and the Congress agree to make clean air within the next 5 years a national goal, we must also be prepared to commit the resources necessary to meet this promise. Clean air is not just the business of industry. If the national challenge for clean air is issued, it will require the hard work and determination of each of us—private citizen and public official as well as the business community. We face the opportunity to join together in working for an improved quality of life—a quality of life that we will share together in any case. The question is not whether we have the means to make cooperative effort; it is whether we have the will and determination. Today, this question is directly posed to the Congress and to this body.

Mr. PROUTY. Mr. President, I would like to make a few remarks at this time about the new air pollution bill, S. 4358.

As cosponsor of S. 3466, the original administration bill on air pollution, I want to add my expression of support for this new bill. Three years ago, we passed the Air Quality Act and hopefully initiated an era of gradually reduced air pollution.

It soon became clear that the disease proved too strong for our first attempt to cure it. For a variety of reasons, pollution has increased. Ironically, as we all know, the problem is a byproduct of affluence—and as we grow richer in the years to come, we must not let bad air compete with our economic progress for the future.

The National Air Quality Standards Act of 1970 contains tough provisions to counteract our pressing problem. I do not wish to enumerate the points of the bill, for excellent summaries have already been given. Rather, I would like to concentrate on some important aspects of the bill, the reasons for which enactment is imperative.

An important underlying philosophy of the bill is that it is the right and duty of each State to develop its own plans to

implement the standards set by the Secretary. To be sure, minimum Federal standards are a must, as they free the 50 States from the necessity of competing for business by lowering their standards. Yet States especially imperiled by foul air are not enjoined from passing more stringent measures.

The sensible means of attacking this problem which varies so radically from one region to the next is, therefore, at the State level with the Federal Government willing and able to assist when needed.

An innovative feature of the bill, in keeping with the urgency of the problem, is the establishment of definite deadlines. State implementation plans must be designed to assure attainment of national ambient air quality standards within 3 years of acceptance. The auto manufacturers are required to reduce pollutant emissions by 90 percent on their 1975 models. In each case the basic tenet of the new bill is explicit: for the first time, air quality standards will take precedence over objections of economic impracticality and technical impossibilities. Products which make life easier at the cost of life itself are worthless. Thus, we are saying that industry must make peace with our environment and we are placing the emphasis on how we grow instead of how fast we grow.

Would-be polluters are forewarned: A livable environment is more important to man and his survival than all of the marketable gadgets produced by our economy to make our life easier.

The air pollution bill, therefore, provides reasonable and effective methods for solving the air pollution problem that has plagued us for so long. It merits our support, not just as an expression of concern, but as a national commitment consistent with the right of all citizens to clean air.

Mr. MONTOYA. Mr. President, today the U.S. Senate faces a critical choice. As a member of the subcommittee on Air and Water Pollution of the Public Works Committee, which is chaired by the distinguished Senator from Maine (Mr. MUSKIE), I have watched this body and this country become increasingly aware of the problems of environmental quality.

Air pollution is not simply a problem of the east coast or Los Angeles. America is industrial and mobile, and that means air pollution. I have received numerous letters from constituents in New Mexico raising concerns about the quality of the air they breathe as New Mexicans and as travelers to other parts of this country. The city of Albuquerque is desperately trying to cope with a growing air pollution problem, and requested funds of over $263,000 for its program: the amount granted totaled only $64,000. I would hope that the stimulus of the passage of this bill and the increased funds it authorizes would help communities like this across the Nation.

Today we vote on the National Air Quality Standards Act of 1970, and our vote may have great influence on the kind of world we inhabit within the next 10 years, and the kind of world we leave our children and grandchildren. There is no time left for delay, for reexamination after reexamination. The problem of clean air has become critical now.

Why is this so? Primarily for two reasons. First, the growth of the sources of air pollution is rising rapidly. This is particularly true when we examine the case of the automobile. This Nation produces about 191 million tons of air pollutants annually, and 92 million tons, or 48 percent of the total, is produced by automobiles. Now here is the most startling fact relating to air pollution and automobiles: The number of motor vehicles in this country grows twice as fast as the number of people. Every moment we delay we compound the problem, and we will eventually have to face the results of any delay. Postponement would simply make the problem more difficult and costly to cure.

Automobiles are not the only source of air pollution growing at a very rapid rate. Studies indicate that the use of electric power will increase even faster. If these studies are correct, and such studies have usually underestimated the increases in the past, then this country will be using five times more electricity in the year 2000 than we presently use. We must decide to put proper controls on the new plants that will produce this power now, before they are built. It is false economy to build first and then attach control devices during some later state of panic. The present bill under consideration would instruct industry to take proper steps now, by requiring new facilities to adopt the best available pollution control technology. This is a sensible provision, not an unrealistic requirement.

The second reason clean air has become a critical problem is that we have not forced ourselves and our economic system to include pollution as a "cost" to anyone. We have allowed, in fact encouraged, industry to pollute. If we do not adopt the present bill before us, essentially in the same form given it by the Air and Water Pollution Subcommittee and the full Public Works Committee, then we will be continuing the same inadequate system with the same inherent mistakes. We can no longer afford those mistakes. In the past an industry received no reward if it controlled its pollution. In fact, it was penalized by raising its own costs of production. The present bill would put all new facilities on the same footing, and would also do much to give Americans clean air. Competitive disadvantage is not created when all new facilities are required to adopt the same level of pollution control technology. This is a reasonable and workable scheme, and I would hope that my Senate colleagues would agree with this concept.

S. 4358 calls for the establishment of national air quality standards. This by no means eliminates the States, for they are responsible for devising implementation plans so that each State can reach the level set in the national standards. Our State and regional organizations simply have not moved fast enough in cleaning up this country's air. The present bill accelerates the cleanup schedule while maintaining the States as part of that program.

The intense activity on the part of the automobile industry with regard to the deadline of January 1975, for compliance with emission standards that had previously been targeted for 1980 has drawn the attention of the press and the public to this portion of the bill. I want to make myself completely clear on this point: Automobiles have not been singled out as a whipping boy; challenging deadlines have been set because automobiles are such a dominant part of the air-pollution problem. They simply cannot be ignored. The car industry says that it does not know how it will meet these standards by the date set in the bill. Yet four young students from Wayne State University hav already figured out how, and have driven across the country in an automobile that meets the 1980 standards right now. This car used unleaded gas—gas that is now available at service stations across the country—and a 1971 Ford Capri V–8 engine. In other words, this was not some little two-cylinder engine nursed across the country by an exotic fuel. The students attached catalytic mufflers, an exhaust recirculation system, an electric fuel pump, insulated fuel line, a carburetor sensitive to temperature changes, and produced a relatively clean engine.

In short, a relatively clean engine by 1975 is not an unreasonable hope, given the experience of these students. The past record of the auto industry shows that it can usually move faster than it thinks it can when called upon to do so. The present bill does not say that Congress knows how to build such an engine. It simply says that the public health is in danger, and that we must call on the industry with the knowhow to produce such an engine. 1975 may be too late. 1980 is undoubtedly too late. We are faced with a crisis, and must act now. Smog killed 20 and made 5,900 ill in Donora, Pa., in 1948. Nothing happened. Impure air killed 4,000 in London in 1952. Very little happened. Foul air caused more than 700 deaths above normal in New York in 1953, 1963, and 1966. Very little happened. Carbon monoxide levels in Chicago, New York, and some other cities have reached a level at which the public health is impaired. The eastern seaboard received another scare this summer when it appeared that a serious air pollution crisis was bearing down on these urban centers. Unnoted by these statistics are the many people who have respiratory diseases that are aggravated by the kind of air they must breathe.

Mr. President, we must act now, and we should act favorably on S. 4358 without adding any crippling amendments.

Mr. COOPER. Mr. President, yesterday, I spoke on the bill, but today I emphasize again the importance of the bill. Following its well developed tradition, the Committee on Public Works has brought to the Senate floor a unanimously and bipartisanly reported bill S. 4358, to amend the Clean Air Act, and for other purposes. It is particularly significant that this bill was reported from committee unanimously and that the committee considered the bill in bipartisan fashion for the amendments to the Clean Air Act represent a great deal more than pollution control provisions, rather, in fact they constitute social legislation which, as the distin-

guished Chairman of the Subcommittee has pointed out, constitute perhaps the most significant piece of domestic legislation that will be considered by the Congress this session.

The quest for environmental quality has brought the society to the point of making difficult choices. Difficult choices because they affect economics, growth, development, and many of the other traditional social activities and goals. To many, the placing of any constraints on these activities is outweighed by a continued unrestricted growth and development. However, the committee, in these Clean Air Act amendments, views the restoration and maintenance of public health as a paramount objective. The committee is also cognizant of the fact that continued degradation of the environment through air pollution could cause serious changes in the natural systems regulating the biosphere and possibly destroy the earth's ability to sustain life.

These are not meant to be alarmist fears. However, the evidence which is accumulating should give every reasonable man cause for concern. We now know, although with varying degrees of precision, that incident sunlight striking the surface of the earth has been reduced significantly as a result of air pollution. In Washington, D.C., for instance, the Smithsonian Institution has recorded a 16-percent reduction in incident sunlight striking the surface of the earth at the Mall. We know that the air pollution is triggering competing forces, one causing or tending to cause a cooling of the earth's atmosphere and the other causing or tending to cause a heating of the earth's atmosphere, but we are as yet not clear as to which of these forces are predominating. Both have great implications for continued success of life on the earth.

Similarly there is now evidence that air pollution is causing a significant deterioration in the fertility of our soil through the leaching of essential nutrients that occurs when acid rainfall percolates through the soil. All of these factors must be given great attention by all of those of us who are concerned about the future.

However, the committee has recognized that short-term adverse effects of air pollution involving the health of the citizens of this Nation must be remedied as soon as possible. Since the enactment of the Clean Air Act in 1963 and the Air Quality Act of 1967, a great deal of information has been learned about the character of air pollution, its extent, and about its effects on health and welfare. The data can only be summarized as requiring action. In many areas of this Nation, and in almost every metropolitan region above 50,000 people, the quality of the air is well below that necessary to maintain public health. For some pollution agents the problem is particularly severe; for instance, carbon monoxide, sulfur oxide, oxides of nitrogen, and hydrocarbons. The effects produced in these high pollution areas range from outright disease causation, to mutagenicity and carcinogenicity, to substantial increase in respiratory disease, and, significantly, to decreased work performance and attendance. All of these problems have reached proportions where the committee believes that it is necessary to act to bring air pollution under control and attain the quality of air necessary to protect the health of our persons. This is the general objective of the bill before the Senate today.

The bill continues the subdivision of the Clean Air Act into three titles to provide a comprehensive and systematic air pollution control program. Title I deals with stationary sources of pollution; title II deals with moving sources of pollution; and title III contains general administrative provisions applicable to the overall act. In part, the major changes proposed in title I result from the adoption of the President's proposal to establish national ambient air quality standards. Through such standards every area of the Nation will be subject to a standard and, therefore, required to develop an implementation plan. The committee modified the President's proposal somewhat so that the national ambient air quality standard for any pollution agent represents the level of air quality necessary to protect the health of persons. Further the bill requires the attainment of this quality of air within an established period of time, 3 years, measured from the date of approval or promulgation of the implementation plan. The committee has adopted this framework based upon a decision that the attainment of the quality of ambient air necessary to protect health is a high priority for this Nation.

In order to provide ultimately for clean air and avoid the chronic degradation of the environment and thereby improve the quality of life, the committee has provided that in addition to establishing national ambient air quality standards the Secretary shall establish national ambient air quality goals; such goals representing the quality of air which will not produce any known or anticipated adverse effect on men or the environment. The committee recognizes that the attainment of such a quality of air cannot be achieved in many areas of the Nation for many years and, therefore, provides that each region shall establish the period of time necessary to achieve national ambient air quality goals subject, of course, to the approval of the Secretary.

The bill does require that the States, in submitting their implementation plan, include those provisions necessary to achieve the ambient air quality goal. The committee recognizes, however, that, in many instances, the program necessary to move from national ambient air quality standards to national air quality goals will require more detailed and extensive analysis than that required for standards and therefore provides an additional 18 months for the development of that portion of the implementation plan.

Another benefit of the concept of national ambient air quality goals is that it provides for the retention and maintenance of present ambient air quality in regions where that air quality is of the quality established by the goal.

The bill recognizes that the control and attainment of ambient air quality standards and goals is dependent upon rigorous application of emission controls. Consequently, the bill provides through four separate procedures for the application of such controls.

First, the bill provides that in developing each implementation plan each air quality control region in every State is required to establish emission requirements for every source of air pollution within such region in order to achieve the quality of ambient air established by the national air quality standard.

Second, the Secretary is required to establish emission standards for pollution agents or combination of such agents, called selected pollution agents, which are not appropriate for the establishment of ambient air criteria and national ambient air quality standards. The Secretary is to establish these emission standards for both new and existing stationary sources which are national in scope.

Third, the Secretary is authorized to initiate an innovative administrative process leading to the development of emission controls for those substances which he finds to be extremely hazardous to health of persons. The Secretary establishes these emission controls through the publication of the proposed prohibition of such pollution agents and promulgates such prohibition unless he determines that a departure from a zero emission for such pollution agent will not jeopardize the health of persons whereupon he promulgates an emission standard prescribing the permissible level of emissions for such pollution agents.

In establishing a fourth class of emission controls, the committee has adopted another of the President's recommendations and requires the Secretary to establish emission controls for all new air pollution facilities of national scope. Through such standards of performance maximum available technology will be installed in all new facilities. With this mechanism, the committee believes that new facilities will be constructed to achieve maximum air pollution control, and, at the same time provide that all new facilities are equal with respect to air pollution control and therefore eliminate a large element of "forum shopping" that is possible if new facilities are not required to meet the level of pollution control.

The committee has further refined the opportunity for public participation in the administrative procedures under the act. It has been demonstrated, pursuant to existing law, that public participation is extremely important in the development of air pollution programs across the country. In requiring that each air quality control region consider the establishment of ambient air quality standards more stringent than the nationally promulgated standard, the bill provides a clear opportunity for the citizens of each region to choose the quality of air that they desire through full consideration of the issues in a public forum.

It has become abundantly clear that air pollution control, as is the case in any good law, is dependent upon a credible and enforceable statute. One of the

principal difficulties for the existing law has been the lack of a decisive enforcement authority and the bill before the Senate seeks to streamline and expedite this authority so that procedural delays in enforcement activities do not frustrate the clear intent of the National Air Quality Standards Act of 1970.

In amending title II the committee recognized that a great portion of the pollution problems in many areas are attributable to emissions of pollution agents from moving sources, including the automobile, commercial vehicles, aircraft and vessels. The committee, therefore, proposes to authorize the establishment of emission standards for all classes of moving vehicles, including both new and old commercial vehicles, vessels and aircraft in distinction to existing law which authorized the establishment of emission standards for only new vehicles. In addition, reflecting the percent contribution to air pollution made by the automobile, the committee has directed to the light duty vehicle particular attention, designed to achieve a reduction in emissions necessary, if the urban areas of the country are ever to achieve and maintain national ambient air quality standards and goals.

Under existing law the test the Secretary must consider in establishing emission controls for automobiles is whether such control is economically and technologically feasible. This, in effect, has made technology and economic feasibility factors, which are under the control of industry, dictate public policy rather than respond to public policy. The committee, recognizing the paramount interest in achieving ambient air quality necessary to protect the health of its citizens proposes to establish emission standards for automobiles based upon requirements related to ambient air quality rather than technological or economic feasibility. Through this mechanism the committee expects to develop maximum incentive to stimulate new technical and economic means of reducing vehicle emissions. Without such incentive, such innovation is not likely to be forthcoming.

The bill, therefore, sets the date of 1975 as the date after which it will be unlawful to sell any automobile which does not meet emission controls for two pollution agents, carbon monoxide and hydrocarbons, which must represent a 90-percent reduction from the level set by emission standards applicable in 1970. In addition, the bill establishes procedure to establish an additional emission standards representing 90-percent reductions for those pollution agents, such as nitrogen oxide, which have not yet been the subject of emission controls under existing law. In establishing these emission standards and strict schedules for compliance the committee recognized that it may be impossible for a manufacturer or manufacturers to comply with such standards before the effective date.

As is widely known the committee struggled with various provisions to provide for a single year suspension of such effective date upon a showing of certain evidence by an applicant for such suspension. These alternatives ranged from provision that would have made a suspension available only from Congress, to suspension issued by the Secretary with no review, to suspension issued by the Secretary which, if not opposed by either House of Congress within a set period would become effective, to secretarial decision with review by an appellate court.

Mr. President, the committee adopted by a vote of 10 to 3 an amendment I offered with Senator BAKER, to establish a standard administrative procedure on the part of the Secretary, following which he would issue a decision to, or not to grant a suspension. Such secretarial decision is reviewable, by the terms of the provision, in the U.S. Court of Appeals for the District of Columbia. It should be noted that the suspension provision is for 1 year only and there are particular guidelines that the Secretary and, independently, the court must review prior to granting, affirming, or denying any such suspension. These guidelines, or tests, include first, the public interest of the United States, second, that all good faith efforts have been made to achieve compliance with the standard, and third, that the technology or other alternatives are not or have not been available to achieve compliance.

I prefer the judicial review framework in the bill for I believe that through the administrative process the Secretary can develop on the record all of the technical and other relevant information necessary to achieve a sound judgment. Similarly, and in accordance with general administrative law, such decision of the Secretary, should be reviewable in the court of appeals so that the interests of all parties can be fully protected. With the record developed by the Secretary, the court, as an unbiased, independent institution, is the appropriate forum for reviewing such decision and making a judgment as to its quality. The normal rules of the court also provide the greatest amount of insulation from the political pressures that will undoubtedly surround a judgment of this type. At the same time, judicial review provides for full procedural and substantive due process for all interested parties. I therefore recommend to the Senate that this provision in the bill be retained.

I think the Committee on Public Works is to be commended for accompanying the stringent substantive provision regarding the air pollution control program with several procedural requirements and opportunities to clearly incorporate due process protection in the application of the proposed law. In three areas provision is made to seek relief from, or review of, administrative actions or the application of the statute. The first of these is a general judicial review provision so that administrative promulgations and decisions made pursuant to the act may be reviewed while maintaining the basic integrity of the act. In section 308 the committee recognizes that administrative actions will affect the interests of persons and that such actions should, therefore, be reviewable.

The second procedural opportunity for relief allows a Governor of a State to seek relief from the effect of the expiration of the period in which the bill would require the attainment of the quality of air established by the ambient standard. In so doing the committee recognizes there may be cause for impossibility of performance but adds safeguards so that the provision will only be used sparingly and where necessary so as to provide incentive for the maximum effort to seek air quality.

The third specific relief provision is that I offered relating to the automobile provision discussed above.

The committee bill also breaks new ground in extending public participation, an essential element throughout the act, to enforcement proceedings. In section 304, the bill proposes to grant jurisdiction to the Federal district courts to hear charges of violation of particular provisions of the act brought by citizens acting in their own behalf. As originally proposed the provision troubled me with respect to its impact on administrative enforcement efforts and, of course, on the courts. During its consideration the committee made particular efforts to draft a provision that would not reduce the effectiveness of administrative enforcement, and not cause abuse of the courts while at the same time still preserving the right of citizens to such enforcement of the act.

The citizen suit provision has developed in a context of other proposals authorizing citizen access to the courts for environmental remedies at both the State and Federal level. Some of these proposals by, in effect, authorizing the development of a common law of pollution could reduce the effectiveness of the Clean Air Act. The most significant of these is an act recently signed into law by Governor Milliken of the State of Michigan.

Mr. President, the bill before the Senate may be the most significant domestic legislation of this Congress. It may be the most significant measure in a domestic sense of any Congress. It is a very complex bill. For me, it has been an educational process. The committee worked very well together and every member of the committee entered into the discussions. As ranking minority member I am very proud of the minority side as well as the majority and would like to particularly praise the staff of the committee.

Yesterday I spoke at length about them, and today I repeat that to Senator MUSKIE and to Senator BOGGS who have been leaders on these measures for many years I pay deep tribute, and to all members of the committee for their devoted work. To Senator RANDOLPH—the able chairman of the full Senate Committee on Public Works, who presided in the full committee over our final deliberation and acceptance of the bill. By the unanimous vote of the committee, may I say great credit is due, his fairness and objectivity helped produce the bill. And may I say, he was a strong right arm in supporting the approval of the Secretary—judicial views, written into the bill.

A MOVE TOWARD SURVIVAL

Mr. YARBOROUGH. Mr. President, the proposed National Air Quality Standards Act of 1970 is among the most crucial pieces of legislation to be considered before the Senate this year. I

highly commend the efforts of Senator MUSKIE and his colleagues on the Public Works Committee who have worked so diligently on this piece of legislation.

We have heard an abundance of rhetoric regarding the urgency of the pollution problem. The National Air Quality Standards Act goes beyond the usual "call to action" or "statement of concern." The bill sets standards, establishes deadlines, and provides for the implementation of comprehensive attacks on the problem of air pollution. The effects of this act will be felt by every American. Our citizenry should be provided with breatheable air for the sake of their personal physical health. The very survival of mankind is threatened if we continue to abuse the fragile balance of our environment. This bill seeks to bring about the necessary improvement in the quality of our air by January 1, 1975. We can no longer afford to allow millions of tons of contamination to be dumped into our atmosphere year after year by automobile and industrial emissions. We hear many suggestions that this legislation establishes a goal, the achievement of which is beyond the capacity of American technology. I do not believe that we lack the ability to come up with the answers to the dilemma which confronts us. Certainly, the gravity of the challenge should not deter us from action.

I have worked for the passage of antipollution legislation since coming to the Senate in 1957. As chairman of the Senate Subcommittee on Health, I urge Senators to support this bill, which is so important to the health of the American people.

AIR QUALITY—A TIME FOR DECISIVE ACTION

Mr. McINTYRE. Mr. President, I stand today in support of the National Air Quality Standards Act of 1970. This bill, one of the most comprehensive ever on the subject, is essential to the national quest for environmental improvement defined so well by our President. It is a tough bill but there is no more room for laxity. Too much is at stake.

To many, it may seem strange that the toughest of our environmental legislation yet focuses on air quality. Other forms of pollution are far more apparent and seemingly widespread even to the layman. The issue here, however, is nothing less than the present and future health of our Nation. I, for one, feel that tough new approaches are not only justified but mandatory. And new toughness in other areas will, hopefully, soon follow.

We cannot delay. We cannot compromise. We must act. A more flexible approach to the problem was attempted in 1967 with the Air Quality Act. But we have learned much since then and all relevant evidence points to the conclusion that more stringent measures are essential. I support them. And I will support such supplemental measures that are reasonably required to implement the public policy expressed in this bill.

I know there has been considerable pressure to allow more flexibility in certain provisions of this bill. The time for flexibility is gone. Four years ago, the Senate passed a very flexible law for air quality. Yet today, industry and citizens dump 200 million tons of pollutants into the atmosphere each year. For the 4 years of operation under the Air Quality Act, this cannot be seen as a reduction in levels of pollution. In many areas, the levels of pollution have actually increased. Flexibility has run its course. Now we must act.

These words are not a condemnation of American industry or of our way of life. Rather, these words and the legislation of which I speak are a reaffirmation of traditional American ideals.

American industry and the American people always have manifested a profound capacity to respond to a challenge clearly stated in terms of national need. This bill states such a challenge. And I believe that the American people and our industry can meet it. We must recognize that the challenge is real, tangible, and of imminent importance to the continued welfare of our Nation.

I am sure the Senate will respond. The course will be hard. Yet we have risen to such challenges before. The American people had only glimpsed the potential of our technology in 1960 when President Kennedy proposed that we land a man on the moon in a decade. Yet we did it. And we managed to beat the timetable by over a year. The present challenge poses the same conceptual dilemma. Much technology needs to be developed in our quest for air quality. I feel that it will be, and I ask that all Americans share that faith as they share the effort.

I would like to add my praise at this time to my colleagues, led by the distinguished Senator from Maine (Mr. MUSKIE) for their tireless efforts in writing this legislation. This bill, as Senator MUSKIE has said, is not partisan legislation or liberal legislation or conservative legislation. It should be noted that the committee that reported this bill included men reflecting all philosophies and points of view. And these men reported this bill unanimously to the Senate.

It should also be noted that our President, Mr. Nixon, has played a major role in the development of this bill. The administration submitted legislative proposals that formed the basis for much of this legislation. Some of the proposals were kept, some changed and many more were added by the committee, yet the President deserves credit for his leadership and open-mindedness in providing the support of his administration for a strong and comprehensive bill.

As written, this legislation would provide the mechanism for a large-scale attack on this Nation's air pollution problem by:

First. Requiring designation of major air quality control regions within 90 days.

Second. Setting procedures to achieve air quality standards that would insure the protection of health. After standards and goals are set, the States will have 9 months to develop a plan to implement the standards.

Third. Requiring that implementation plans be designed to achieve conformance with air quality standards within 3 years.

Fourth. Allowing States to adopt even stricter air quality standards than those set by the Federal Government.

Fifth. Authorizing regulations to require that new industries meet emission performance standards based on the latest control technology, processes, and operating methods.

Sixth. Providing for civil—$10,000—and criminal—up to $50,000 and 2 years—penalties for violations and authorizing pollution abatement orders.

Seventh. Requiring that national emission standards also apply to vessels and aircraft and providing that 1975 model cars must achieve at least a 90-percent reduction in polluting exhaust from the 1970 standards. Penalties would range up to $10,000 per vehicle.

Eighth. Requiring a warranty of 50.-000 miles on a vehicle's emission system performance and authorizing the Secretary of Health, Education, and Welfare to have cars road tested and recall those produced if they do not meet standards.

Ninth. Authorizing certification of low-emission vehicles for research and development purposes and for Federal acquisition of such vehicles for demonstration purposes.

Tenth. Authorizing $125 million in research for fiscal 1971, $150 million for 1972, and $175 million for 1973 for research relating to fuels and vehicles.

Eleventh. Providing 3-to-1 funding to States and providing for the option assignment of Federal personnel in place of cash grants.

Twelfth. Permitting citizens to file suits to enforce standards.

Thirteenth. Authorizing $725 million for 3 years for enforcement, grant assistance, and administration.

Fourteenth. Establishing an Office of Noise Abatement and Control within the Department of Health, Education, and Welfare.

I repeat, this is a strong bill. It attacks in forceful manner such problems as ambient air standards and interjurisdictional problems. The result is worthy of full support and strong, timely enforcement. It is my hope that Americans will familiarize themselves with the terms and far-reaching philosophy of this legislation. The task now is to transform the language into reality and into air that we can all share in good health and common gratitude.

Mr. GRAVEL. We can all be grateful, Mr. President, for the committee's able and lucid report on this complicated and desperately needed bill, which I have the honor to cosponsor. However, I would like to take this opportunity to raise one objection to the treatment in the report of the growing radioactive hazard to our environment.

In discussing section 115, the committee did not specifically cite man-made radioactivity as a "hazardous air pollution agent" for which the secretary should immediately consider prohibiting release. Yet the phrase, "hazardous to the health of persons" as defined in paragraph 7B of that section most certainly would apply to man-made radiation as well.

The Council on Environmental Quality stated in its first report that "radiation is potentially a more dangerous pollutant to man than pesticides." Yet, the com-

mittee report—page 18—still puts pesticides and radioactive substances side-by-side.

For 25 years we have recognized a link between radiation and both cancer and genetic mutations.

Recent calculations indicate that cancer might increase 10 percent if we all were to receive chronic radiation even at the low levels presently permissible. Fortunately, we are not yet receiving the permissible dose. This is one area where we still have the chance to prevent such an environmental tragedy.

Even the most conservative scientists in the current debate over radiation acknowledge that radiation is two to three times more powerful at producing cancer than they thought just 10 years ago.

It should be remembered, when we consider the meaning of the phrase "hazardous to health," that a single "hot particle" of radioactive plutonium lodged in the lung is capable of causing a lethal cancer. Furthermore, although there are 50 trillion cells in our bodies, it takes only one single cell, smashed by radiation, to cause a malignancy.

There is no doubt whatsoever that radiation damages human cells. New instruments have made it possible to observe broken and damaged chromosomes inside the cells. As an Alaskan I am particularly concerned that these observations have been made on Eskimos whose doses of radiation from fallout were below the present guidelines used by the Atomic Energy Commission. Chromosomes, of course, carry the genetic heritage of the human race.

AEC experts, plus the few independent experts in the field of radiation, all agree that we must assume no amount of radiation is so low that it is harmless. With regard to genetic damage, the AEC says it quite simply in one of its booklets called "the genetic effects of radiation." "There is no safe amount of radiation as far as genetic effects are concerned."

The Nobel-prize winner, Dr. Joshua Lederberg, recently stated that, if we all were to receive the presently permissible dose of radiation, we could expect a 10-percent increase in the human mutation rate.

Obviously, the "hazard to health" presented even by very low doses of radiation is staggering—since 25 percent of all human diseases and illnesses have a known genetic component, and that does not mean just obscure diseases; that includes the Nation's No. 1 killer: Heart disease.

Dr. Lederberg estimates the cost of the extra medical care generated by a 10-percent increase in the mutation rate would be about $10 billion a year in a country of 200 million people.

Further, he explicitly warns that we must not wait to deal with radiation until we can observe our disease-rate and mental damage growing:

> A level of risk that approaches the intolerable, once we are well aware of it, may be impossible to verify by direct measurements of disease diffused throughout the population. In exceptional circumstances, an effect like the peculiar malformations induced by thalidomide comes to the surface, and then achieves a *visibility* and notoriety all out of proportion to other agents. If the malformation induced by thalidomide were a mental retardation of ten percent of the I.Q. instead of a highly characteristic and unusual deformation of the limbs, in an equal number of subjects, we would be *unaware* of it to this day.

The urgency of prohibiting further emissions of radioactivity to our air and water now, not 5 years from now, becomes even more striking when we realize that more than 100 radioactive powerplants are already in preparation in 28 States, and that the AEC expects to license another 400 or 500 within the next 30 years.

Each 1,000 megawatt nuclear powerplant will produce, every year that it operates at 75-percent capacity, as much radioactivity as the explosion of several hundred Hiroshima-size bombs. That could mean the equivalent of 250,000 bombs every year, if there were 500 plants operating.

Their waste will have to be contained at the plant, during transportation, at the fuel-cleaning plants, and during processing for perpetual storage.

Complete containment would have to be assured at every step of the way, and no accidents. Even 1-percent leakage in the annual total would mean a 2,500 bomb equivalent.

The nuclear industry is saying that it is expensive, but technically feasible, to design zero-release nuclear powerplants.

My position is that nuclear malfunctions, which are frequent, and accidents, which will occur with unknown frequency, will give us quite enough additional radiation without accepting any routine releases at all.

The AEC is trying to calm the public, so it compares the present level of routine releases of manmade radiation with levels of natural radiation, from the rocks and the stars. The nuclear industry even sponsored a 2-page advertisement to that effect in Newsweek, September 21. The trouble is: "Two wrongs don't make a right."

Natural radiation is also lethal. It is true that the levels of natural radiation are still higher than the levels from a technology just emerging from its infancy. Is that any comfort, when nuclear technology is being designed under standards which would permit the tripling of our natural dose?

In the face of the obvious failure of environmental dilution to render DDT, mercury, lead, and automobile exhaust harmless, there is something pathetic—and frightening—about current AEC assurances that dilution will take care of radioactive emissions. The fact is that radioactive substances are known to reconcentrate in the animal chain to over 1 million times their initial concentration in the radioactive effluent.

With a matter as hazardous as radioactivity, we simply cannot count on dilution alone. Instead, we must consider steps to prohibit and prevent releases of man-made radioactivity.

Under section 115 of this bill the Secretary of Health, Education, and Welfare will have the power to control standards for emission of hazardous air pollution agents. Certainly he should use that power to force those who are proposing admissible levels of radioactive contamination of our air to prove in public hearing—if they can—that radioactive agents are not hazardous to the health of human beings.

I am a firm believer, Mr. President, in the goal of a zero level of acceptable man-made radioactive pollution of our environment. Those who propose anything less should be required within the terms of this legislation to justify their plans before the American people.

The PRESIDING OFFICER. Do Senators yield back the remainder of their time?

Mr. MUSKIE. I yield back the remainder of my time.

Mr. GRIFFIN. I yield back the remainder of my time.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass?

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN (after having voted in the negative). On this vote I have a live pair with the Senator from Arizona (Mr. FANNIN). If he were present and voting he would vote "yea." If I were permitted to vote, I would vote "nay." I withdraw my vote.

Mr. WILLIAMS of Delaware (when his name was called). I have a pair with the junior Senator from Arizona (Mr. GOLDWATER). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I withhold my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. PELL), the Senator from Georgia (Mr. RUSSELL), the Senator from Alabama (Mr. SPARKMAN), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Utah (Mr. Moss), the Senator from Washington (Mr. MAGNUSON), the Senator from Missouri (Mr. SYMINGTON), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Wyoming (Mr. MCGEE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from Tennessee (Mr. BAKER), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Nebraska (Mr. HRUSKA), the Senator from California, (Mr. MURPHY), the Senator from Pennsylvania (Mr. SCOTT) the Senator from Alaska

(Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from New York (Mr. GOODELL), the Senator from South Dakota (Mr. MUNDT), the Senator from California (Mr. MURPHY), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The respective pairs of the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER) have been previously announced.

The result was announced—yeas 73, nays 0, as follows:

[No. 323 Leg.]

YEAS—73

Aiken	Fong	Mondale
Allen	Fulbright	Montoya
Allott	Gravel	Muskie
Anderson	Gurney	Nelson
Bayh	Hansen	Packwood
Bennett	Harris	Pastore
Bible	Hart	Pearson
Boggs	Hatfield	Percy
Brooke	Holland	Prouty
Burdick	Hollings	Proxmire
Byrd, Va.	Hughes	Randolph
Byrd, W. Va.	Inouye	Ribicoff
Case	Jackson	Saxbe
Church	Javits	Schweiker
Cook	Jordan, N.C.	Smith, Maine
Cooper	Jordan, Idaho	Smith, Ill.
Cotton	Long	Spong
Cranston	Mansfield	Stennis
Curtis	Mathias	Talmadge
Dole	McCarthy	Thurmond
Dominick	McClellan	Yarborough
Eagleton	McGovern	Young, N. Dak.
Eastland	McIntyre	Young, Ohio
Ellender	Metcalf	
Ervin	Miller	

NAYS—0

PRESENT AND GIVING LIVE PAIRS AS PREVIOUSLY ANNOUNCED—2

Griffin, against.
Williams of Delaware, against.

NOT VOTING—25

Baker	Hruska	Scott
Bellmon	Kennedy	Sparkman
Cannon	Magnuson	Stevens
Dodd	McGee	Symington
Fannin	Moss	Tower
Goldwater	Mundt	Tydings
Goodell	Murphy	Williams, N.J.
Gore	Pell	
Hartke	Russell	

So the bill (H.R. 17255) was passed.

Mr. MUSKIE. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

Mr. BOGGS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of Senate amendments to H.R. 17255 and that the bill be printed as it passed the Senate.

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

Mr. MUSKIE. Mr. President, I ask unanimous consent that S. 4358 be postponed indefinitely.

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

Mr. MUSKIE. Mr. President, I ask unanimous consent that an article which appeared in the Louisville, Ky., Courier-Journal and Times, discussing the role of the distinguished Senator from Kentucky (Mr. COOPER) in this matter, be printed in the RECORD.

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

POLLUTION SHOWDOWN: COOPER AND COMPANY VERSUS DETROIT

(By Leonard Pardue)

WASHINGTON.—The Senate Public Works Committee, which seems an unlikely dragon-slayer, has aimed its lance at the stoutly armored automobile industry, and the battle will be joined this week.

The committee, whose senior Republican member is Sen. John Sherman Cooper of Kentucky, has proposed that the industry be required, by Jan. 1, 1975, to start producing cars that don't pollute the air with their exhausts.

The industry has responded that it cannot meet the deadline. It casts doubt on its ability to invent effectively anti-pollution devices that quickly and, beyond that, stresses the difficulty of rapid alteration of production lines.

The committee's weapon is a bill it has endorsed that would rewrite federal air pollution-control procedures. The measure is scheduled to come before the Senate this week, probably tomorrow.

The contest pits the nation's largest industry against a committee that has traditionally devoted much of its time to building highways and dams and to improving navigation facilities on rivers and in harbors.

Those preoccupations have had to yield in recent years, first to responsibility for water pollution-control efforts (because of the committee's concern with waterways), and then to attempts to clean up the nation's air.

"This committee used to be rather staid in its jurisdiction," said Sen. Cooper in an interview last week. "Suddenly we find ourselves in charge of most of the environmental questions."

As Cooper sees it, the committee came to its conclusions about the need for a deadline for Detroit because there are so many cars and they have so much to do with air quality.

"This is the major factor of pollution. Every effort must be made to correct it," he said.

The bill would simply require that cars produced after the beginning of 1975 emit 90 per cent less pollutants than federal standards permit for 1970 models. In effect, that means a pollution-free automobile.

Cooper gave these two specific arguments for setting the 1975 deadline:

"If you don't fix these standards, you won't get the maximum effort on the part of the companies to meet them." In other words, the committee believes necessity will be the mother of invention.

Delay in producing a nonpolluting car raises the possibility that there will be "further degrading of the air." Cooper pointed out that the 10-year average life of a car means it will take a decade for the full impact of the pollution-free car to be felt. "We have all these used cars—they're practically hopeless" in terms of pollution control, he said.

The committee isn't really sure the auto industry can meet the deadline. "I don't suppose anyone knows exactly whether they can make it or not," Cooper says.

A provision of the committee's bill would permit the secretary of health, education and welfare or the courts to extend the deadline a year, if the industry could show the impossibility of meeting the 1975 requirement. Cooper put forward that part of the bill—in the interest, he said, of offering the industry recourse to the courts as a matter of due process of law.

Another ameliorating part of the bill, from the manufacturers' standpoint, would permit the auto companies to share their technological advances in the pollution field without running afoul of federal anti-trust laws.

The committee appears to have come to its decision to seek a deadline partly because of its conclusions about antipollution requirements for factories and power-generating plants.

That section of the bill would completely reorganize the current federal approach toward state and regional pollution-control programs.

The HEW secretary would be required to establish national clean-air standards that limit pollutants to amounts safe for the health of persons. States and interstate pollution-control regions (such as the one encompassing the metropolitan Louisville area) would have to write plans to achieve those stands. They would have to restrict pollution to whatever extent necessary to bring about air that is safe to breathe.

The bill, in fact, gives implicit sanction to such local actions as forbidding an industry to locate in an area if its exhausts would damage air quality, or restricting traffic in certain areas, if that would help clear the air. It does this by saying that implementation plans properly may include "land-use and transportation controls and permits."

The bill sets out specific timetables for each of the steps involved in setting national standards, adopting local plans, and achieving the goals. The schedule proposed in the bill would mean that in about 4½ years, the air everywhere should be at least as clean as the national standards say it should be.

This concept of requiring clean air by a specific date was advocated most forcefully in the committee's deliberations by Senator Thomas Eagleton, D-Mo. He is a member of the subcommittee on air and water pollution, as is Cooper.

Sen. Edmund Muskie, the Maine Democrat who is subcommittee chairman, draws most of the credit as author of the legislation, but it was Eagleton who confronted officials of the National Air Pollution Control Administration, during a hearing, with the question of a specific deadline.

Dr. John T. Middleton, the agency's director, said the law ought to allow "a reasonable time" for compliance, particularly since all the technical devices for controlling exhausts don't yet exist.

"I am trying to force the state of the art" of pollution control, Eagleton replied.

He also argued that it would be inconsistent to write legislation to attain clean air without guaranteeing that the goals would be met by a certain date.

That thinking prevailed, and "the concept of deadlines runs throughout this bill," says Bailey Guard, Cooper's chief aide on the committee.

While Guard insists that the sections of the bill regarding national clean-air standards and local efforts to meet them are of utmost importance, it is the timetable for the auto industry that is receiving most of the attention.

"Detroit is complaining bitterly," Guard said, gesturing toward some telegrams and letters on a table in his office. Already local auto dealers in Kentucky have mobilized to send wires to Cooper to protest the bill.

Cooper in a sense acknowledges that they have reason to complain. He calls the committee's stand "a hard position"—one that will cost auto companies "large sums of money" for research; that may result in "higher costs for motor cars"; that may force manufacturers to "revolutionize their propulsion systems."

There are critics of the internal-combustion engine (most notably the Ralph Nader task force that studied air pollution) who think some substitute must be found.

The bill, in fact, would increase federal funds for research into other propulsion methods, such as steam and electricity, but this is an effort that Detroit welcomes. One industry witness before Muskie's subcommittee said he is confident the research will show there is no feasible alternative to the internal-combustion engine.

Should the industry fail to develop a clean gasoline-burning engine in time for use in 1975 or '76, and should no alternate engine be available, the thinking is that Congress might then change the law, relaxing the pollution requirements or giving the industry more time to meet them.

"Recourse to the Congress is always there," Cooper said. Muskie has taken the same view.

So the stage is set for this week's debate on the future of the auto industry and the future of the air we breathe.

Cooper believes the Senate is likely to approve the committee's bill. It would probably then wind up in a Senate-House conference committee, where its fate is difficult to predict. However, some clean-air bill must be approved this year, because the current law expires.

In any case, it is perhaps a measure of the depth of the national air-pollution problem that moderate men like Cooper and Sen. Jennings Randolph of West Virginia, the Public Works Committee chairman, have come to support such rigorous action.

"We spent God knows how many hours going over the bill line by line, all of us learning all the time," Cooper said. "If this is successful, it will have a tremendous effect on reduction of air pollution, there's no question about that."

Mr. MANSFIELD. Mr. President, once again the Senate has witnessed one of those rare legislative achievements under the leadership of the Senator from Maine (Mr. MUSKIE). By the passage of this bill, the most far-reaching hope of achieving the goal of a pollution-free atmosphere comes closer to realization. His mastery of the subject matter and the brilliance of his presentation are reflected in the unanimity of the vote. Some would classify this bill as the strongest, the toughest, the most far-reaching. I can only say that it is the best. I know of the long hours, of the many meetings required under the leadership of Senator MUSKIE to bring about this achievement. To Senator MUSKIE and his entire subcommittee, the country is indebted.

I wish to pay special tribute to the ranking Republican member of his subcommittee, the able Senator from Delaware (Mr. BOGGS). His cooperation and assistance, advice and contribution are so indelibly impressed in every phase of this measure.

To the chairman of the full committee (Mr. RANDOLPH) and the ranking member of the full committee (Mr. COOPER), the Senate owes a special thanks for their efforts in bringing about this achievement.

To the Senator from Kansas (Mr. DOLE) and Kentucky (Mr. COOK) and the Senators from Michigan (Mr. HART and Mr. GRIFFIN) and the Senator from Florida (Mr. GURNEY), their cooperation with the leadership and contributions to this debate are greatly appreciated.

The Senate as a whole can be justly proud of its record in the enactment of this bill.

DESIGNATION OF OBSCENE OR OFFENSIVE MAIL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1235, S. 3220.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read the bill by title, as follows: S. 3220, a bill to protect a person's right of privacy by providing for the designation of obscene or offensive mail matter by the sender and for the return of such matter at the expense of the sender.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Post Office and Civil Service with an amendment to strike out all after the enacting clause and insert:

That section 3010(a) of title 39, United States Code, as enacted by section 2 of the Postal Reorganization Act (Public Law 91-375; 84 Stat. 749), is amended—

(1) by inserting "(1)" immediately after the subsection designation "(a)"; and

(2) by striking out all after the word "thereof" the first time it appears and inserting in lieu thereof the following: "the following notice in outstanding type: 'The Enclosed Material Is Sexually Oriented Advertising, And May, If Unrequested By The Addressee, Be Returned To The Sender Unopened At No Cost To The Addressee.'

"(2) Any unrequested sexually oriented advertisement may be returned to the sender at no cost to the addressee. Any such unrequested advertisement returned to the sender under this paragraph shall be delivered to the sender, who shall pay return postage plus a service charge (not less than 50 cents for each piece of mail matter so delivered) to be determined by the Postal Service."

SEC. 2. Section 3010 of such title is further amended by inserting at the end thereof the following new subsection:

"(e) (1) A sender who fails to mark the envelope or other cover of mail matter as required by subsection (a) (1) of this section, or who refuses to pay the postage or the service charge for any piece of unrequested mail matter, returned under subsection (a) (2) of this section, shall be subject to a civil penalty of $5,000 for each piece of such matter which is not marked or refused.

"(2) A civil action to collect any such civil penalty may be brought by the United States in the district court of the United States for any judicial district in which the sender resides, has his principal place of business, or is found, or in the district court for the judicial district to which mail matter, subsequently resulting in the civil action to collect the civil penalty, was sent. Process of any such court for any such district issued in any such action may be served in any other judicial district."

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the final vote on this bill occur at the hour of 12:30 tomorrow afternoon, and I ask that rule XII be waived.

The PRESIDING OFFICER. Is there objection? Without objection, rule XII will be waived.

The order subsequently reduced to writing is as follows:

Ordered, That the Senate proceed to vote at 12:30 p.m. on September 23, 1970, on S. 3220, to protect a person's right of privacy by providing for the designation of obscene or offensive mail matter by the sender and for the return of such matter at the expense of the sender.

Mr. MANSFIELD. Mr. President, I yield to the Senator from Florida (Mr. HOLLAND).

AMENDMENT OF ACT FIXING THE BOUNDARY OF EVERGLADES NATIONAL PARK, FLA.

Mr. HOLLAND. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2565.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2565) to amend the Act fixing the boundary of Everglades National Park, Fla., and authorizing the acquisition of land therein, in order to increase the authorization for such acquisitions", which was to strike out all after the enacting clause, and insert:

That section 8(a) of the Act entitled "An Act to fix the boundary of Everglades National Park, Florida, to authorize the Secretary of the Interior to acquire land therein, and to provide for the transfer of certain land not included within said boundary, and for other purposes", approved July 2, 1958 (72 Stat. 280) as amended (83 Stat. 134; 16 U.S.C. 410p), is amended by striking out "$2,000,000" and inserting in lieu thereof "$22,000,000".

SEC. 2. The second sentence of section 2 of the said Act of July 2, 1958, is amended by inserting a period after the word "otherwise" and deleting the remainder of the sentence.

Mr. HOLLAND. Mr. President, this matter has been cleared on both sides. This is the bill to authorize the acquisition of all remaining inholdings in Everglades National Park. Two amendments were adopted by the House which were necessitated by the fact that a measure affecting the Everglades National Park had been passed since this bill was introduced, making two technical amendments necessary.

At the request of the Senator from Nevada (Mr. BIBLE), chairman of the subcommittee, and with the approval of the Senator from Colorado (Mr. ALLOTT), the ranking minority member of the committee, I move that the Senate concur in the two House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Florida.

The motion was agreed to.

Mr. HOLLAND. Mr. President, I move that the action of the Senate in approving the motion be reconsidered.

Mr. GRIFFIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLAND. Mr. President, I thank the majority leader for yielding to me.

DESIGNATION OF OBSCENE OR OFFENSIVE MAIL

The Senate continued with the consideration of the bill (S. 3220) to protect a person's right of privacy by providing for the designation of obscene or offensive mail matter by the sender and for the return of such matter at the expense of the sender.

Mr. MANSFIELD. Mr. President, I send to the desk an amendment to the pending bill and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows: Between lines 19 and 20 on page 5 insert the following:

(3) Each piece of mail required to carry the above notice must be sent at the rates prescribed for first class mail.

Mr. MANSFIELD. Mr. President, the intent of this amendment is to place an added burden on the pusher—the peddler, if you will—of pornographic literature, literature which is unsolicited, lewd literature which is an invasion of the right of privacy of the individual. This amendment seeks to cope with a problem which has become quite prevalent through the use of second-, third-, and even fourth-class mail.

It is my hope that this proposal, affecting unsolicited obscene literature, pornographic material through the mails, will be given the most serious consideration.

The way it operates at the present time, the U.S. Government, because of the fact that it does deliver, collect, and deposit mail, acts as a handmaiden to these pushers of pornography. This is one way to face up to a problem which has become quite prevalent.

In my own State of Montana, based on the correspondence I have received from many of my constituents—and I know in other States of the Nation as well—many people are greatly offended by this unsolicited literature.

This bill has nothing to do with what one seeks to acquire, but, I repeat, has to do only with unsolicited pornographic material delivered to the homes of the citizens of this country; I think when these materials are sent without request or solicitation there is a clear invasion of a person's right of privacy. Those individuals that market these materials should be limited in their distribution to those individuals that specifically request them. This bill will put a burden on these distributors to bear the financial risk of paying return postage plus a service charge if any party receives their materials without prior request. In addition, first-class postage rates must be used by the distributors to send out their products. This added burden is imposed by the amendment just adopted by the Senate. I believe, Mr. President, that this bill is an excellent start in protecting the option of the individual not to view pornographic literature.

Mr. President, I ask unanimous consent that a statement contained in the report of the Committee on Post Office and Civil Service be printed in the RECORD at this point.

There being no objection, the excerpt from the report (No. 91–1217) was ordered to be printed in the RECORD, as follows:

STATEMENT

In favorably reporting S. 3220 with amendments to the Senate, the committee first took into account the obvious and urgent need to find an effective way of stopping the delivery through the mails of unsolicited salacious and prurient materials. The written and photographic pornography brought to the attention of the committee is shocking, often perverse; clearly people who naturally find such materials repulsive, degrading, and offensive should be protected from it and should have the right to protect their families from it.

Increasing numbers of complaints directed against the unsolicited delivery of pornography to homes and offices have been received by the committee and by other Members of Congress; and the committee's public hearing emphasized that the tide of unsolicited pornography in the mails is highly repugnant to many thousands of recipients who have no idea how their names came to be a part of the senders' mailing lists. It is apparent that Senator Mike Mansfield and those who joined him as cosponsors of S. 3220 have, through this bill, pointed to a clear and present avenue through which every citizen's privacy can be invaded; and that this measure merits congressional action.

The committee weighed carefully the requirements for effective legislative action in the same scale with the responsibility to protect every citizen's rights guaranteed by the first and fifth amendments. In the balance against those rights also is the constitutional right of privacy which has been clearly defined by the Supreme Court. Trespassers may be lawfully ejected from private property or removed by police. Uninvited salesmen, purveying whatever product, may be ordered off the doorstep. These rights to protect one's privacy are rooted deep in ancient common law.

The committee through this bill as amended seeks to assure that this same fight to protect one's privacy in his home is applied to protect every citizen from unsolicited pornography, in any medium of communication, delivered through the mails. If the sanctity and privacy of the home are protected by the common law right to eject trespassers, so should ordinary decent, family life be protected from pornographic materials moving gratuitously into the mailbox from the mail stream.

This measure as amended involves no censorship. It is silent on mail matter ordered or requested by the addressee, who, when he breaks the seal, knows what to expect. S. 3220 is designed to protect the family member, possibly an impressionable child, from the shock of unsuspectingly opening an unmarked envelope and finding within it lurid and blatant sexual photographs or other sexual material.

This bill supports and adds to current law which now provides a measure of protection against unsolicited pornography.

In 1967, the Congress enacted title III of Public Law 90–206 providing that the recipient of any pandering advertisement was authorized to file a complaint with the Postmaster General and thus initiate a series of administrative actions designed to stop any further mailing to the addressee of such mail. In its 1969 term, the Supreme Court of the United States sustained the constitutionality of that statute.

The Postal Reorganization Act signed into law in August 1970 includes a provision, to become effective February 1, 1971, permitting any person to file with the postal service a statement that he or his minor children or both do not wish to receive from any source any sexually oriented advertisement. The act provides that the postal service will maintain a list of these persons and will make the list available to mailers at cost. The General Counsel of the Post Office Department testified that the postal service contemplates maintaining the list by computer and making computer printouts of nationwide names and addresses available for sale to mailers. Mailers are prohibited from sending sexually oriented advertisements to anyone whose name has been on the list for more than 30 days. The act provides for the use of court orders to enjoin violation of this prohibition. Civil penalties are reserved for willful violations.

S. 3220 AS INTRODUCED

S. 3220 as introduced provides that the envelope or other cover of any mail matter that includes obscene mail matter or mail matter that may be obscene or offensive shall be marked by the sender: "The Enclosed Material May Be Obscene or Offensive to the Addressee."

Obscene mail matter, for the purposes of the bill, is defined.

The bill further provides that any mail matter received by the addressee and determined by him in his sole discretion to be obscene may be returned to the sender. The addressee is required to write "Obscene Mail Matter" on the returned envelope. Provision is made that the sender pay the first-class rate for the return of the mail matter plus a service charge of not less than 50 cents.

A sender who fails to mark the cover or who refuses to pay the postage or service charge will be subject to a civil penalty of $5,000 for each such failure.

The committee considered the following possible misapplications of the bill as introduced:

The addressee may return to the sender, at the sender's expense and with a surcharge imposed upon him, any mail matter "determined by him [the addressee] in his sole discretion to be obscene." Thus any mailing could be returned, if the addressee were willing to state that he found it obscene. This would impose postage and penalty costs upon the sender and subject him to the hazard of a $5,000 fine if he failed to pay the costs. The committee heard testimony that many copies of a recent issue of a national magazine reporting on current sexual mores in a way inoffensive to most people would doubtless have been returned as obscene, at great and unwarranted cost to the publisher. Political advertisements, mail-order catalogs, or any mail would be subject to return. The Post Office Department noted that "In its most evenhanded form, [the bill] is saying that the mailing of any matter may cost the sender 62 cents, if the addressee chooses to return it as obscene."

S. 3220 covers all mail matter which may fall within the bill's definition of obscenity, imposing restrictions not only upon unsolicited pornographic material but also upon mail which the addressee has ordered and is purchasing. Inoffensive art publications depicting nudes, for example, would be required by law to be labeled as possibly being obscene. All advertisement for such a publication could be returned to the sender at his expense.

COMMITTEE AMENDMENTS

The committee has amended S. 3220 in such a way as to minimize these possible misapplications. As amended, the bill expands the provisions of section 3010 of title 39, United States Code, as enacted by Public Law 91–375, and Postal Reorganization Act.

Presently, section 3010 imposes restrictions upon sexually oriented advertisements. Thus, the thrust of the amended bill is to provide further protection for addressees from offensive advertising material sent through the mail. The bill as introduced applies to any obscene mail matter or mail matter that may be obscene or mail matter that the addressee deems to be obscene. The committee believes that it is advertisements which constitute the greatest bulk of unsolicited sexual mail. Other such mail is generally ordered or requested.

Section 3010(a) provides that sexually oriented advertisements shall bear the name and address of the sender and such mark or notice as the postal service may prescribe. The amended bill amends section 3010(a) by requiring the following notice to be printed on the cover: "The Enclosed Material Is Sexually Oriented Advertising and May, If Unrequested by the Addressee, Be Returned To the Sender Unopened At No Cost To The Addressee."

The amended bill provides that any unrequested sexually oriented advertisement may be returned unopened at no cost to the addressee. Return postage shall be paid by the sender plus a service charge of not less than 50 cents.

Retained unchanged is the provision of Public Law 91-375 discussed earlier which allows any person to file with the postal service notice that he desires to receive no sexually oriented advertisements; the provision that the postal service shall maintain lists of such persons and make them available to mailers at a cost; the provision that mailers may not send sexual advertisements to anyone whose name has been on the list for 30 days.

Retained also is section 3010's definition of "sexually oriented advertisement," which contains the following exclusion: "Material otherwise within the definition * * * shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters."

This exclusion from the definition of sexually oriented advertisements, absent from the bill as introduced, will serve effectively to exempt advertisements which are not salacious and prurient in intent and will prevent wholesale and possibly malicious misuse of the right to return.

The right to return mail at the expense of the sender if the mail is determined in the sole discretion of the addressee to be obscene is not retained in the amended bill.

S. 3220 as amended adds a new section following closely the provisions of the bill as introduced: postage plus service charge to be paid by the sender and liability to a $5,000 civil penalty for noncompliance.

The committee also amended the title of the bill to make it more descriptive of the bill's purpose. The title now refers to sexually oriented advertisements rather than to obscene and offensive mail matter.

SUMMARY

S. 3220 as amended adds to the procedure by which the privacy of the home may be protected from sexually oriented material by placing reasonable and enforceable restrictions upon sexual advertisements. The committee believes that it is through advertisements of sexual material that privacy is most often invaded.

1. Under Public Law 90-206, through a complaint to the Postmaster General, a citizen can set in motion administration action designed to halt the delivery at his home of pandering advertisements.

2. Through section 3010 of title 39, United States Code, as enacted by Public Law 91-375, the sender of sexually oriented advertisements must, by law, state on the cover that the enclosed material is sexually oriented.

3. A person who does not wish to receive sexually oriented advertisements in his own name or in the name of his minor children may so advise the postal service and the postal service shall make his name available to mailers who are prohibited from sending him such advertisements.

4. Under the provisions of S. 3220 as amended any unrequested sexually oriented advertisement may be returned to the sender at no cost to the addressee. Return postage of such unrequested advertisements will be paid by the sender plus a surcharge of not less than 50 cents.

When a question arises whether there is a violation on the part of the sender, a determination will be made by a district court of the United States. The court will have recourse to the definition spelled out in law excepting certain advertising matter from the general restrictions.

The committee believes that these explicit provisions of law, taken together, will protect the privacy of the home from invasion by unsolicited sexual material and will protect publishers and advertisers from unjustified misapplication of the law.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. MANSFIELD. Mr. President, there will be no vote on this measure tonight. I know of no further amendments. We will vote on it at 12:30 tomorrow, as agreed by the Senate.

The PRESIDING OFFICER. Does the Senator wish third reading now?

Mr. MANSFIELD. No; I would prefer waiting until tomorrow.

POTENTIAL U.S. INTERVENTION IN THE MIDDLE EAST

Mr. HATFIELD. Mr. President, as the situation in the Middle East becomes more volatile and the fate of the present government in Jordan more in doubt, I think that we should give careful consideration to exactly what American interests in the area are and, from that perspective, determine what action should be taken by our Government.

There has been a great deal of publicity given to the potential unilateral military intervention of the United States into Jordan to either try to safely evacuate American citizens there or to support the government of King Hussein. The only type of intervention, I believe, in which our country should engage should be with food and medical supplies, and then preferably through multilateral or third party efforts. To unilaterally move into Jordan, no matter how humanitarian our motives, could even possibly increase the present danger to American lives, particularly the hostages, and precipitate a major confrontation and possibly a third world war.

We have an obligation to protect American lives in the Middle East, but the question is how to best accomplish this end. It has been reported that Egypt expressed a willingness to send an airplane to evacuate 100 newsmen, mostly American, from Amman. Possibly an Arab country, such as Egypt, Lebanon, or Kuwait, or a third party, such as the Red Cross or the United Nations, could do the same for our other citizens. If American military personnel were to arrive in Amman it would be very difficult to delineate between a humane project to withdraw civilian people and the military-political implications. It has been stated, for instance, we could not safely evacuate our citizens without politically and militarily securing Amman. Clearly, this action would have severe consequences.

We have permitted over the past 22 years a vacuum to be created in the Middle East and are now suffering the consequences of neglecting the third force which we helped to create: the Palestinian refugees. But we must start to solve this problem by supporting the territorial integrity of Israel and all of the nations in the Middle East. And if the integrity of Jordan is judged to be jeopardized by another country, we should consider sending Jordan military materiel, as in the case of Israel, but not personnel.

This is the time for more aggressive diplomatic action in the Middle East. The United States based upon historic, cultural, and religious ties with all the parties in the Middle East, has an opportunity to play a reconciling role in a situation which has been sadly neglected in the past.

LEGISLATIVE PROGRAM

Mr. BYRD of West Virginia. Mr. President, just as a reminder to Members, tomorrow the Senate will vote, at 12:30 p.m., on S. 3220, the bill dealing with pornographic mail, and at 2 p.m. there will be a vote, under the previous order, on the conference report on S. 3637, the equal time amendment under the requirements of the Communications Act of 1934.

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

Mr. BYRD of West Virginia. I yield.

Mr. ALLEN. As to the vote on the anti-pornographic bill at 12:30, at what time is it anticipated that the bill will be laid before the Senate and become the pending business?

Mr. BYRD of West Virginia. Mr. President, I cannot answer the question, except to say this: The Senate will adjourn until 10 o'clock tomorrow morning, and the able Senator from Massachusetts (Mr. KENNEDY) will be recognized under the previous order for not to exceed 15 minutes. Following that order, there will be a period for the transaction of routine morning business. I am just not in a position to state what the situation will be with regard to Senate Joint Resolution 1 tomorrow morning. I knew the able Senator has that in mind.

Mr. ALLEN. That is what I had in mind. I wondered how much time is to be allocated to Senate Joint Resolution 1. Apparently it is going to be pretty well frozen out, under this plan.

Mr. BYRD of West Virginia. I do know that there have been discussions today between the majority leader and the Senator from Indiana (Mr. BAYH), and other Senators, but I am not in a position to know, much less to say, what the situation will be in the morning.

Mr. ALLEN. Is it anticipated that Senate Joint Resolution 1 might possibly be indefinitely postponed tomorrow?

Mr. BYRD of West Virginia. I doubt that that will be the case.

Mr. ALLEN. The junior Senator from Alabama hopes that is the case.

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

Mr. BYRD of West Virginia. I yield.

Mr. GRIFFIN. Mr. President, along a related line, of course, the ranking minority member of the Post Office and Civil Service Committee (Mr. FONG) will, I think, have some remarks with regard to the pending bill on which a vote is to be taken at 12:30 tomorrow. Although the acting majority leader, of course, cannot assure us, would it be the intention there would be some time in advance of the vote, which would be equally divided, perhaps, to discuss the bill tomorrow?

Mr. BYRD of West Virginia. I think that can be arranged. How much time does the distinguished Senator think the Senator from Hawaii would want?

Mr. GRIFFIN. I imagine 15 minutes.

Mr. BYRD of West Virginia. Mr. President, without having had an opportunity to discuss this matter with the principal parties, I take the liberty of presenting the following unanimous-consent request:

I ask unanimous consent that, beginning at 12 o'clock noon tomorrow, there be 30 minutes of debate on the pending bill, the time to be equally divided between the able majority leader and the able minority leader, or their designees.

Mr. ALLEN. Mr. President, reserving the right to object, does that anticipate that at that time Senate Joint Resolution 1 will have been displaced as the pending business for the day?

Mr. BYRD of West Virginia. No, not for the day. Just for that particular time, the half hour for debate, and the time which would be required for the rollcall, which has already been ordered.

May I say to the able Senator, I am just in no position to state, because I do not know, what the situation will be tomorrow with respect to Senate Joint Resolution 1. As it now stands, the Senator will recall that earlier today, under the unanimous-consent request, Senate Joint Resolution 1 was made the order of business for tomorrow following the conclusion of the period for the transaction of routine morning business. That order still stands.

Mr. ALLEN. Then after the disposition of this bill, would we go back, then, to Senate Joint Resolution 1?

Mr. BYRD of West Virginia. I would suspect so, unless, prior to that time, arrangements have been agreed upon to set Senate Joint Resolution 1 aside for a longer period.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. BYRD of West Virginia. I ask unanimous consent that, following the statement by the Senator from Massachusetts (Mr. KENNEDY) tomorrow, for which an order has already been granted, there be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

Mr. BYRD of West Virginia. There could very well be, depending on the hour at which the period for the transaction of routine morning business is concluded, some discussion of Senate Joint Resolution 1 prior to 12 o'clock, when the Senate will again return to the pending measure.

Mr. ALLEN. I thank the Senator.

Mr. BYRD of West Virginia. So, Mr. President, in recapitulation, the Senator from Massachusetts will speak for 15 minutes following the prayer and the disposal of any unobjected-to bills on the Legislative Calendar tomorrow morning. There will then be a period for the transaction of routine morning business, and if that period for the transaction of routine morning business should close prior to 12 o'clock noon, Senate Joint Resolution 1, which is the unfinished business, will automatically come back before the Senate.

In any event, at 12 o'clock noon tomorrow, time on the pornographic mail measure would begin running. There would be one-half hour of debate, and at the close of that period, the vote on the bill would occur.

The PRESIDING OFFICER. The Senator from West Virginia is mindful also of the conference report on which there is a unanimous consent for a vote at 2 p.m.

Mr. BYRD of West Virginia. Yes. There will be a vote at 2 p.m. on the conference report, and this request was agreed to yesterday.

May I say to the Senator from Alabama that I hope we can make progress on various measures tomorrow.

Mr. ALLEN. I interpose no objection.

Mr. BYRD of West Virginia. I understand that. Hopefully, some time tomorrow the majority leader may be in a position to state what the situation will be with regard to future action on Senate Joint Resolution 1.

Mr. ALLEN. I thank the distinguished Senator.

Mr. BYRD of West Virginia. I know that the majority leader is very hopeful of getting on with the conduct of business on the calendar awaiting action, while at the same time giving the junior Senator from Indiana an ample opportunity to expound upon the virtues of Senate Joint Resolution 1 before another cloture vote is reached.

Mr. ALLEN. The junior Senator from Alabama is anxious to hear the distinguished Senator from Indiana.

Mr. BYRD of West Virginia. And I am sure that the distinguished Senator from Alabama will have some additional contributions to make with respect to that measure.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 51 minutes p.m.) the Senate adjourned until tomorrow, Wednesday, September 23, 1970, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 22, 1970:

U.S. CIRCUIT COURTS

John Paul Stevens, of Illinois, to be a U.S. circuit judge for the seventh circuit, vice Elmer J. Schnackenberg, deceased.

Robert H. McWilliams, Jr. of Colorado, to be U.S. circuit judge for the 10th circuit, vice Jean S. Breitenstein, retired.

U.S. DISTRICT COURTS

Sam C. Pointer, Jr., of Alabama, to be a U.S. district judge for the northern district of Alabama, vice a new position created under Public Law 91-272 approved June 2, 1970.

Walter K. Stapleton, of Delaware, to be a U.S. district judge for the district of Delaware, vice Edwin D. Steel, Jr., retired.

Frank J. McGarr, of Illinois, to be a U.S. district judge for the northern district of Illinois, vice a new position created under Public Law 91-272 approved June 2, 1970.

FEDERAL TRADE COMMISSION

David S. Dennison, Jr., of Ohio, to be a Federal Trade Commissioner for the term of 7 years from September 26, 1970, vice Philip Elman.

NATIONAL MEDIATION BOARD

David H. Stowe, of Maryland, to be a member of the National Mediation Board for the term expiring July 1, 1973, vice Leverett Edwards, term expired.

HOUSE OF REPRESENTATIVES—*Tuesday, September 22, 1970*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Let us come boldly to the Throne of Grace, that we may obtain mercy and find grace to help in time of need. Hebrews 4: 16.

O God and Father of us all, who hast taught us not only to think of ourselves but to think of others and to be concerned about them, we remember before Thee all who are burdened and oppressed, particularly our prisoners of war. Comfort them with the sense of Thy presence, strengthen them for the ordeal they are facing, give them patience in their suffering, keep the hope of deliverance alive within them, and grant a happy issue out of all their affliction—a safe return to their loved ones.

Bless their families, weary and heavy laden, living in dark uncertainty yet still hoping and praying and working for the return of those they love with all their hearts.

May we here highly resolve to continue to do our best to seek the release of the captives, the end of war, and the beginning of peace on earth: through Jesus Christ our Lord. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

RECESS

The SPEAKER. The Chair declares a recess subject to the call of the Chair.