DALL, Mr. BRINKLEY, Mr. EDMONDSON, Mr. PEPPER, Mr. SMITH of California, Mr. SANDMAN, Mr. CLARK, Mr. SATTERFIELD, and Mr. FLYNT):

H.R. 19543. A bill to make it a Federal crime to kill or assault a fireman or law enforcement officer engaged in the performance of his duties when the offender travels in interstate commerce or uses any facility of interstate commerce for such purpose; to the Committee on the Judiciary.

By Mr. ICHORD (for himself, Mr. DINGELL, Mr. MILLER of Ohio, Mr. LANDGREBE, Mr. DANIEL of Virginia, Mr. BROYHILL of North Carolina, Mr. ASHBROOK, Mr. COWGER, Mr. DORN, Mr. GOODLING, Mr. PATMAN, Mr. HECHLER of West Virginia, Mr. EVINS of Tennessee, Mr. WATSON, Mr. PIKE, Mr. DEVINE, Mr. CHAPPELL, and Mr. MCKNEALLY):

H.R. 19544. A bill to make it a Federal crime to kill or assault a fireman or law enforcement officer engaged in the performance of his duties when the offender travels in interstate commerce or uses any facility of interstate commerce for such purpose; to the Committee on the Judiciary.

By Mr. LOWENSTEIN:

H.R. 19545. A bill to provide that the United States shall reimburse the States and their political subdivisions for real property taxes not collected on certain real property owned by foreign governments; to the Committee on Foreign Affairs.

By Mr. PEPPER (for himself, Mr. STANTON, and Mr. STOKES):

H.R. 19546. A bill to provide for a program of Federal assistance in the development, acquisition, and installation of aircraft antihijacking detection systems, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. SKUBITZ:

H.R. 19547. A bill to amend the Internal Revenue Code of 1954 to provide charitable deduction for blood donations; to the Committee on Ways and Means.

By Mr. TEAGUE of California:

H.R. 19548. A bill to provide for the control and prevention of further pollution by oil discharges from Federal lands off the coast of California, and to provide for the improvement in the state-of-the-art with respect to oil production from submerged lands; to the Committee on Interior and Insular Affairs.

By Mr. UDALL:

H.R. 19549. A bill to establish a program for the protection of aircraft from air piracy; to authorize the purchase of magnetometers and other electronic sensing devices for the purpose of detecting air pirates, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. FULTON of Pennsylvania:

H. Con. Res. 758. Concurrent resolution to express the sense of Congress on international measures to discourage hijacking; to the Committee on Foreign Affairs.

H. Con. Res. 759. Concurrent resolution urging the President to determine and undertake appropriate actions with respect to stopping armed attacks on aircraft and passengers engaged in international travel; to the Committee on Foreign Affairs.

By Mr. SCHMITZ:

H. Con. Res. 760. Concurrent resolution expressing the sense of the Congress with respect to sanctions against Rhodesia; to the Committee on Foreign Affairs.

By Mr. WHALLEY:

H. Con. Res. 761. Concurrent resolution urging the President to determine and undertake appropriate actions with respect to stopping armed attacks on aircraft and passengers engaged in international travel; to the Committee on Foreign Affairs.

By Mr. MURPHY of New York (for himself and Mr. FRIEDEL):

H. Res. 1232. Resolution calling for a national commitment to cure and control cancer within this decade; to the Committee on Interstate and Foreign Commerce.

By Mr. SPRINGER:

H. Res. 1233. Resolution to amend the Rules of the House of Representatives to create a standing committee to be known as the Committee on the Environment; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. HALPERN introduced a bill (H.R. 19550) for the relief of Tito P. Romero, which was referred to the Committee on the Judiciary.

PETITIONS, ETC.

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

607. By the SPEAKER: Petition of Mrs. Fidelia Poblete Macapaz, Makati, Rizal, Philippines, relative to redress of grievances; to the Committee on Foreign Affairs.

608. Also, petition of CUNA International, Inc., Madison, Wis., relative to consumers affairs; to the Committee on Government Operations.

SENATE—*Wednesday, September 30, 1970*

The Senate met at 10 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

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

Almighty God, by whose providence we have been brought to this new day, we give Thee hearty thanks for the good land Thou hast given us. Forgive our transgressions; cleanse us from things that defile our national life, and grant that this people, which Thou hast abundantly blessed, may keep Thy commandments, walk in Thy ways, and trust in Thy grace.

Be gracious to our times, that by Thy bounty both national quietness and pure religion may be duly maintained. Keep the Members of this body steadfast and true and may Thy peace abide in their hearts.

Let the beauty of the Lord our God be upon us, and establish Thou the work of our hands upon us; yea, the work of our hands, establish Thou it.

Through Jesus Christ our Lord. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 30, 1970.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, September 29, 1970, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent—and I believe this has been cleared—that the Committee on Finance, the Committee on Commerce, the Subcommittee on Education of the Committee on Labor and Public Welfare be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

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

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

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

DEPARTMENT OF LABOR

The assistant legislative clerk read the nomination of Malcolm R. Lovell, Jr., of Michigan, to be an Assistant Secretary of Labor.

Mr. COTTON. Mr. President, I will not inconvenience or delay the Senate by asking for a rollcall vote on the confirmation of this nomination.

I merely state for the RECORD that if we had a rollcall vote, I would be compelled to vote against confirmation.

The ACTING PRESIDENT pro tempore. The question is, will the Senate advise and consent to the nomination of Malcolm R. Lovell, Jr., of Michigan, to be an Assistant Secretary of Labor?

The nomination was confirmed.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The assistant legislative clerk read the nomination of Wilmot R. Hastings, of

Massachusetts, to be General Counsel of the Department of Health, Education, and Welfare.

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

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

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

LEGISLATIVE SESSION

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

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business with a time limitation of 3 minutes therein.

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

Is there morning business to be transacted at this time?

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PERSONAL STATEMENT ON REASONS FOR VOTING FOR CLOTURE MOTION ON YESTERDAY

Mr. BYRD of West Virginia. Mr. President, I voted for cloture yesterday for three reasons:

First. A constitutional amendment was involved. The protection of a minority viewpoint is, therefore, adequately assured by the Constitution, which requires, for adoption, a two-thirds vote of both Houses and ratification by three-fourths of the States. This is quite different from invoking cloture on a bill, the passage of which would require only a majority of both Houses of the Congress.

Second. The matter on which the cloture motion was intended to apply was a matter to which I was not opposed. As a member of the Judiciary Subcommittee on Constitutional Amendments, I had voted to report the resolution providing for election of the President by direct popular vote, having supported in preference thereto the proportional system and the district system, both of which were rejected.

Third. Considerable time for debate had elapsed, with one cloture motion already having been attempted.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF CLAIMS SETTLED BY GENERAL SERVICES ADMINISTRATION UNDER MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT OF 1964

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a report on claims settled by that Administration under the Military Personnel and Civilian Employees' Claims Act of 1964 for the fiscal year ended June 30, 1970 (with an accompanying report); to the Committee on the Judiciary.

REPORT ON HEALTH CONSEQUENCES RELATING TO USE OF MARIHUANA

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a preliminary report concerning current information on the health consequences of using marihuana (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT OF OPERATIONS BY FEDERAL DEPARTMENTS AND ESTABLISHMENTS IN CONNECTION WITH BONDING OF OFFICERS AND EMPLOYEES

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a report of operations by Federal departments and establishments in connection with the bonding of officers and employees, for the fiscal year ended June 30, 1970 (with an accompaning report); to the Committee on Post Office and Civil Service.

REPORT OF THE CANADA-U.S. INTERPARLIAMENTARY GROUP

A letter from the chairman of the Senate delegation, Canada-U.S. Interparliamentary Group, transmitting, pursuant to law, a report of the group on the 13th meeting, March 10–15, 1970 (with an accompanying report); to the Committee on Foreign Relations.

PETITION

A petition was laid before the Senate and referred as indicated:

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

A resolution adopted by the City Council of Gardena, Calif., relating to more direct funding of city programs; to the Committee on the Judiciary.

ENROLLED BILL SIGNED

The ACTING PRESIDENT pro tempore (Mr. ALLEN) announced that on today, September 30, 1970, he signed the enrolled bill (H.R. 14373) to authorize the Secretary of the Navy to convey to the city of Portsmouth, State of Virginia, certain lands situated within the Crawford urban renewal project (Va–53) in the city of Portsmouth, in exchange for certain lands situated within the proposed southside neighborhood development project, which had previously been signed by the Speaker of the House of Representatives.

S. 4418—ORIGINAL BILL REPORTED TO AUTHORIZE APPROPRIATIONS FOR CONSTRUCTION OF CERTAIN HIGHWAYS—FIXING A TIME FOR COMMITTEE ON PUBLIC WORKS TO FILE A REPORT (S. REPT. NO. 91–1254)

Mr. RANDOLPH. Mr. President, I report a clean bill from the Committee on Public Works, authorizing appropriations for the fiscal years 1972 and 1973 for the construction of certain highways and for other purposes.

I ask unanimous consent that the bill in its entirety be printed in the RECORD. I also ask unanimous consent that the committee have until midnight, Wednesday, September 30, 1970, to file an accompanying report, together with individual views.

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

The text of the bill is as follows:

S. 4418

A bill to authorize appropriations for the fiscal years 1972 and 1973 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes

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

SHORT TITLE

SECTION 1. SHORT TITLE.—This Act may be cited as the "Federal-Aid Highway Act of 1970".

REVISIONS OF AUTHORIZATION OF APPROPRIATIONS FOR INTERSTATE SYSTEM

SEC. 2. Subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, as amended, is amended by striking "$2,225,000,000 for the fiscal year ending June 30, 1974," and the last sentence thereof and inserting "$4,000,000,000 for the fiscal year ending June 30, 1974, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1975, and the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1976."

AUTHORIZATION OF USE OF COST ESTIMATE FOR APPORTIONMENT OF INTERSTATE FUNDS

SEC. 3. (a) The Secretary of Transportation is authorized to make the apportionment for the fiscal years ending June 30, 1972, 1973, and 1974, of the sums authorized to be appropriated for such years for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in table 5 of House Document Numbered 91–317, Ninety-first Congress, as revised pursuant to subsection (b) of this section.

(b) The Secretary is authorized and directed to develop apportionment factors for a revised table 5, House Document 91–317, which shall reflect the capability of the States to obligate funds apportioned for the Interstate System for the fiscal years ending June 30, 1972, 1973, and 1974.

EXTENSION OF TIME FOR COMPLETION OF SYSTEM

SEC. 4. (a) The second paragraph of section 101(b) of title 23, United States Code, is amended by striking out "eighteen years" and inserting in lieu thereof "twenty years" and by striking out "June 30, 1974", and inserting in lieu thereof "June 30, 1976".

(b) The introductory phrase and the second and third sentence of section 104(b)(5) of title 23; United States Code, are amended by striking "1974" where it ap-

pears and inserting in lieu thereof "1976", and such section 104(b)(5) is further amended my striking the two sentences preceding the last sentence and inserting in lieu thereof the following: "The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to April 10, 1970. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1972, June 30, 1973, and June 30, 1974. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1973. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1975, and June 30, 1976."

MINIMUM ONE-HALF PERCENT APPORTIONMENT FACTOR FOR INTERSTATE SYSTEM

SEC. 5. (a) Paragraph (5) of subsection (b) of section 104 of title 23, United States Code, is amended by adding at the end thereof the following new sentence: "No State shall receive less than one-half of 1 per centum of the total apportionment for each year under this paragraph."

(b) By February 1, 1972, the Secretary shall report to Congress on his recommendations for the apportionment of funds and matching requirements for work on Federal-aid highways in States which have completed, or are nearing completion of construction on Interstate System mileage located in their State, and for all States after completion of the Interstate System.

AUTHORIZATIONS

SEC. 6. For the purpose of carrying out the provisions of title 23, United States Code, the following sums are hereby authorized to be appropriated:

(1) For the Federal-aid primary system and the Federal-aid secondary system and for their extension within urban areas of less than fifty thousand population, out of the Highway Trust Fund, $1,050,000,000, for the fiscal year ending June 30, 1972, and $1,050,000,000, for the fiscal year ending June 30, 1973. The sums authorized in this paragraph for each fiscal year shall be available for expenditure as follows:

(A) 55 per centum for projects on the Federal-aid primary highway system;

(B) 35 per centum for projects on the Federal-aid secondary highway system; and

(C) 10 per centum for projects on extensions of the Federal-aid primary and Federal-aid secondary highway systems in urban areas of less than fifty thousand population, and to carry out the purposes of section 135.

(2) For the Federal-aid Urban System, out of the Highway Trust Fund, $375,000,000 for the fiscal year ending June 30, 1972, and $450,000,000 for the fiscal year ending June 30, 1973.

(3) For forest highways, out of the Highway Trust Fund, $33,000,000 for the fiscal year ending June 30, 1972, and $33,000,000 for the fiscal year ending June 30, 1973.

(4) For public lands highways, out of the Highway Trust Fund, $16,000,000 for the fiscal year ending June 30, 1972, and $16,000,000 for the fiscal year ending June 30, 1973.

(5) For forest development roads and trails, $170,000,000 for the fiscal year ending June 30, 1972, and $170,000,000 for the fiscal year ending June 30, 1973.

(6) For public lands development roads and trails, $8,000,000 for the fiscal year ending June 30, 1972, and $10,000,000 for the fiscal year ending June 30, 1973.

(7) For park roads and trails, $30,000,000 for the fiscal year ending June 30, 1973.

(8) For parkways, $20,000,000 for the fiscal year ending June 30, 1972, and $20,000,000 for the fiscal year ending June 30, 1973.

(9) For Indian reservation roads and bridges, $30,000,000 for the fiscal year ending June 30, 1973.

(10) For carrying out section 402 of title 23, United States Code (relating to highway safety programs), out of the Highway Trust Fund, $75,000,000 for the fiscal year ending June 30, 1972 and $100,000,000 for fiscal year ending June 30, 1973.

(11) For carrying out section 403 of title 23, United State Code (relating to highway safety research and development), out of the Highway Trust Fund, $70,000,000 for the fiscal year ending June 30, 1972, and $115,000,000 for the fiscal year ending June 30, 1973, such sums to remain available for expenditure for two years after the close of the fiscal year for which such sums are appropriated.

(12) For carrying out section 131 of title 23, United States Code (relating to control of outdoor advertising), out of the Highway Trust Fund, $27,000,000 for the fiscal year ending June 30, 1971, $20,500,000 for the fiscal year ending June 30, 1972, and $50,000,000 for the fiscal year ending June 30, 1973.

(13) For carrying out section 136 of title 23, United States Code (relating to control of junkyards), out of the Highway Trust Fund, $3,000,000 for the fiscal year ending June 30, 1971, $3,000,000 for the fiscal year ending June 30, 1972, and $5,000,000 for the fiscal year ending June 30, 1973.

(14) For carrying out section 319(b) of title 23, United States Code (relating to landscaping and scenic enhancement), out of the Highway Trust Fund, $1,500,000 for fiscal year ending June 30, 1972, and $10,000,000 for fiscal year ending June 30, 1973.

(15) For necessary administrative expenses in carrying out section 131, section 136, and section 319(b) of title 23, United States Code, out of the Highway Trust Fund, $1,500,000 for the fiscal year ending June 30, 1971, $1,500,000 for the fiscal year ending June 30, 1972, and $3,000,000 for the fiscal year ending June 30, 1973.

(16) Paragraph (10) of section 5 of the Federal-Aid Highway Act of 1968 (relating to authorizations for carrying out section 402 of title 23, United States Code) is hereby repealed.

FEDERAL AID URBAN SYSTEM

SEC. 7. (a) Subsection (a) of section 101 of title 23, United States Code, is amended as follows:

(1) After the definition of the term "Federal-aid secondary system", add the following new paragraph:

"The term 'Federal-aid urban system' means the Federal-aid highway system described in subsection (d) of section 103 of this title."

(2) The definition of the term "Interstate System" is amended to read as follows:

"The term 'Interstate System' means the National System of Interstate and Defense Highways described in subsection (e) of section 103 of this title."

(b)(1) Subsections (d) and (e) of section 103 of title 23, United States Code, are redesignated as subsections (e) and (f), respectively, including all references thereto, and section 103 is further amended by adding immediately after subsection (c) the following subsection (d):

"(d) The Federal-aid urban system shall be established in each urban area of fifty thousand population or more. In making selections for this urban system, those highways which best serve the goals and objectives of the community as determined by the responsible public officials of such urban area based upon the planning process required pursuant to the provisions of section 134 of this title and which are designed to reduce traffic congestion and to facilitate the flow of traffic in the urban area shall be included. Routes on the Federal-aid urban system shall be selected by the responsible public officials in cooperation with and subject to the approval of the State and by the Secretary as provided in subsection (f) of this section. The urban system shall also include urban extensions of the primary and secondary systems in urban areas of fifty thousand population or more which extensions shall remain under the control of the State subject to the provisions of section 134 of this title. The provisions of chapters 1, 3, and 5 of this title that are applicable to Federal-aid primary highways shall apply to the Federal-aid urban system except as determined by the Secretary to be inconsistent with this subsection."

(2) Relettered subsection (f) of section 103 of title 23, United States Code, is amended by inserting after "the Federal-aid secondary system," the following: "the Federal-aid urban system."

(3) Subsection (a) of section 103 of title 23, United States Code, is amended to read as follows:

"(a) For the purposes of this title, the four Federal-aid systems, the primary system, the urban system, the secondary system, and the Interstate System, are established and continued pursuant to the provisions of this section."

(4) Subsection (b) of section 103 of title 23, United States Code, is amended by striking the period at the end of the next to last sentence and inserting in lieu thereof a comma and the following: "but not including any roads on the Federal-aid urban system."

(5) Subsection (c) of section 103 of title 23, United States Code, is amended by inserting after "the Federal-aid primary system" a comma and the following: "the Federal-aid urban system,".

(c)(1) Subsection (b)(3) of section 104 of title 23, United States Code, is amended to read as follows:

"(b)(3) For extension of the Federal-aid primary and Federal-aid secondary systems within urban areas of less than fifty thousand population:

"In the ratio which the population in municipalities and other urban areas of five thousand or more but less than fifty thousand in each State bears to the total population in municipalities and other urban areas of five thousand or more but less than fifty thousand in all the States as shown by the latest available Federal census."

(2) Subsection (b) of section 104 of title 23, United States Code is amended by adding at the end thereof the following new paragraph

"(6) For the Federal-aid urban system:

"In the ratio which the population in municipalities and other urban areas of fifty thousand or more in each State bears to the total population in municipalities and other urban areas of fifty thousand or more in all States as shown by the latest available census."

(3) Section 104 of title 23, United States Code is amended by adding at the end thereof the following:

"(f) Any funds which are apportioned under paragraph (6) of subsection (b) of this section for the Federal-aid urban system to a State may be used in whole or in part for the construction of highways for facilities to directly facilitate and control traffic flow as provided for in section 135

and for the implementation of section 137 of this title."

(d) Subsections (d) and (e) of section 105 of title 23, United States Code, are redesignated (e) and (f), respectively, including all references thereto, and section 105 is further amended by adding immediately after subsection (c) a new subsection (d):

"(d) In approving programs for projects on the Federal-aid urban system, the Secretary shall require that such projects be selected by the responsible public officials of such urban area in cooperation with the State."

(e) Subsection (b) of section 106 of title 23, United States Code, is amended to read as follows:

"(b) In addition to the approval required under subsection (a) of this section, proposed specifications for projects for construction on (1) the Federal-aid secondary system, except in States where all public roads and highways are under the control and supervision of the State highway department, and (2) the Federal-aid urban system, shall be determined by the appropriate responsible public officials in cooperation with and approved by the State."

(f) Subsection (a) of section 120 of title 23, United States Code, is amended by striking out "and the Federal-aid secondary system" and inserting in lieu thereof a comma and the following: "the Federal-aid secondary system, and the Federal-aid urban system."

(g) The first sentence of subsection (a) of section 123 of title 23, United States Code, is amended to read as follows:

"When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary, urban or secondary systems, or on the Interstate System, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project."

ELIMINATION OF SEGMENTS OF INTERSTATE SYSTEM NOT TO BE CONSTRUCTED

SEC. 8. Section 103 of title 23, United States Code, as amended by section 7 of this Act is further amended by adding at the end thereof the following new subsection:

"(g) The Secretary shall remove from designation as a part of the Interstate System for the purpose of apportionment of funds pursuant to section 104(b)(5) of this title and the Federal share payable pursuant to section 120(c) of this title, any segment of such system for which a State has not established by ten days subsequent to January 2, 1973, a schedule for the expenditure of funds for completion of construction of such segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System, and with respect to which the State has not provided the Secretary with assurances satisfactory to him that such schedule will be met, and for which a State has not submitted plans, specifications, and estimates for his approval by July 1, 1975. Such segment shall remain as part of the Interstate System but such designation shall create no Federal financial responsibility except that Federal-aid highway funds otherwise available to the State may be used to construct such segments as part of the Interstate System. The provisions of subsection (e) (2) of this section shall not apply with respect to any segment of the Interstate System eliminated pursuant to this subsection."

ECONOMIC, SOCIAL, ENVIRONMENTAL AND OTHER IMPACT

SEC. 9. (a) Subsection (a) of section 101 of title 23, United States Code, is amended by—

(1) Adding the following after the period at the end of the definition of the term "construction": "It further includes the cost of adjustments needed to reduce adverse economic, social, environmental and other impacts caused by a project, as required by section 109(h) of this title, and includes, among other things, equal employment opportunity training and skill improvement programs authorized by section 140 of this title, and the cost of the acquisition of replacement housing sites and of the acquisition, rehabilitation, relocation, and construction of replacement housing pursuant to section 142 of this title. Such costs shall also include exclusive or preferential bus lanes, highway traffic control devices, bus passenger loading areas and facilities, including shelters, bus terminals, bus storage, and parking areas and facilities."

(2) Striking the period at the end of the first sentence in the definition of the term "highway" and inserting in lieu thereof a comma and the following: "and for purposes of relocation assistance pursuant to chapter 5 of this title, also includes any area which has suffered direct economic, environmental, social or other injury as the result of its location adjoining or near a highway project."

(b) Section 109(g) of title 23, United States Code, is amended to read as follows:

"(g) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system unless such plans and specifications are accompanied by a plan for minimizing possible soil erosion both during and after the construction of the project. Such plan shall be tailored to the individual needs of the project and be in accordance with guidelines for soil erosion control issued by the Secretary."

(c) Such section 109 is further amended by adding the following new subsections:

"(h) As soon as possible but not later than July 1, 1972, the Secretary, after consultation with appropriate Federal officials, shall issue guidelines for avoiding, minimizing or overcoming possible adverse economic, social, environmental and other impacts relating to any proposed projects on any Federal-aid system. Not later than two years after the publication of such guidelines, the Secretary shall not approve any plans and specifications for any such proposed project unless such plans and specifications are accompanied by a comprehensive analysis identifying the associated economic, social, environmental, and other adverse impacts of such proposed project and the plans and specifications include adequate measures for avoiding, minimizing or otherwise overcoming such adverse impacts in compliance with such guidelines. The impact problems to be accounted for should include but not be limited to the following:

"(1) air, noise, and water pollution;

"(2) destruction or disruption of manmade and natural resources, aesthetic values, community cohesion, and the availability of public facilities and services;

"(3) adverse employment effects, and tax and property value losses;

"(4) injurious displacement of people, businesses, and farms; and

"(5) disruption of desirable community and regional growth.

"(i) The Secretary, after consultation with appropriate Federal, State, and local officials, shall develop and promulgate noise level standards compatible with different land uses and after July 1, 1972, shall not approve plans and specifications for any proposed project on any Federal-aid system for which location approval has not yet been secured unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards.

"(j) The Secretary, after consultation with the Secretary of Health, Education, and Welfare, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended."

(d) Subsection (b) of section 307 of title 23, United States Code, is amended by adding the following sentence: "The highway research program herein authorized shall also include studies to identify and measure, quantitatively and qualitatively, those factors which relate to economic, social, environmental, and other impacts of highway projects."

HIGHWAY PROJECT PRIORITIES

SEC. 10. Section 105 of title 23, United States Code, is amended by adding at the end thereof the following new subsections:

"(g) In approving programs for projects on the Federal-aid systems, the Secretary shall give priority to projects which will provide adequate direct and convenient public access to passenger or cargo terminal buildings at public airports and seaports.

"(h) In approving programs for projects on the Federal-aid secondary system, the Secretary shall give priority to projects which will encourage the location of business and industry in rural communities, facilitate the mobility of labor in sparsely populated areas, and provide rural citizens with improved highways to such public and private services as health care, recreation, employment, education, and cultural activities, or otherwise encourage the social and economic development of rural communities."

COST REDUCTION

SEC. 11. Section 106 of title 23, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) In such cases as the Secretary determines advisable, plans, specifications, and estimates for proposed projects on any Federal-aid system shall be accompanied by a value engineering or other cost reduction analysis."

PUBLIC HEARING

SEC. 12. Section 128 of title 23, United States Code, is amended to read as follows:

"§ 128. Public hearings

"(a) Prior to the submission of any plans required under section 134 of this title or plans for any highway project to be constructed under the provisions of this title, the Governor or other duly constituted State authority shall certify to the Secretary that public hearings have been held by a duly authorized State or local official or that the people of the area or community involved have been afforded an opportunity to be heard and that opportunity has been afforded during such hearing for the presentation of testimony and other evidence on the economic and social effects of such a plan, highway location or design, its impact on the environment and, to the extent applicable, its consistency with goals and objectives set forth in the urban transportation plan for the area as required by section 134 of this title. Such certification of the economic, social, environmental, and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.

"(b) When hearings have been held under subsection (a), the Governor or other duly constituted State authority shall submit a copy of such hearings to the Secretary together with the certification and report."

EMERGENCY RELIEF

SEC. 13. (a) The first sentence of subsection (a) of section 125 of title 23, United States Code, is amended to read as follows: "An emergency fund is authorized for expenditure by the Secretary, subject to the provisions of this section and section 120 of this title, for (1) the repair or reconstruction of highways, roads, and trails which we shall find have suffered serious damage as the result of (A) natural disaster over a wide

area such as by floods, hurricanes, tidal waves, earthquakes, severe storms, or landslides, or (B) catastrophic failures from any cause, in any part of the United States, and (2) the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to the enactment of this Act, because of imminent danger of collapse due to structural deficiencies or physical deterioration."

(b) Section 120(f) of title 23, United States Code, as amended, is amended by adding before the last sentence thereof the following new sentence: "As used in this section and section 143 of this title, 'a comparable facility' shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life."

FEDERAL PARTICIPATION IN THE IMPROVEMENT OF TOLL ROADS

SEC. 14. Section 129 of title 23, United States Code, is amended by adding a new subsection (e) and redesignating (e) as subsection (f):

"(e) Notwithstanding the provisions of subsection (b) of this section, the Secretary may permit Federal participation in the reconstruction and improvement of any toll road which is a designated part of the Interstate System as he may find necessary to bring such toll road to standards for the Interstate System in order to provide for the safe use of such highways as part of the Interstate System and to facilitate the tolls therefrom. Federal participation in such reconstruction and improvement shall be on the same basis and in the same manner as in the construction of free Interstate System highways under this chapter. No Federal participation shall be permitted pursuant to this subsection except on toll roads which were designated as a part of the Interstate System on or before June 30, 1968: *Provided*, That the State and toll road authority involved shall agree that no additional indebtedness to be liquidated by the collection of tolls shall be incurred after the date of the agreement permitting such Federal participation and that the toll road shall become a free road when such indebtedness is liquidated."

MARINE HIGHWAY FACILITIES

SEC. 15. (a) Subsection (f) of section 129 of title 23, United States Code, is amended to read as follows:

"(f) Notwithstanding the provisions of section 301 of this title, the Secretary may permit Federal participation under this title in the construction of marine highway facilities, whether toll or free, the route of which has been approved under section 103 (b) or (c) of this title as a part of one of the Federal-aid systems and has not been designated as a route on the Interstate System. Such facilities may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated facilities shall be applied to payment of the cost of construction or acquisition thereof, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement. For the purpose of this section 'construction of marine highway facilities' includes the construction or reconstruction of ferries or other necessary vessels and docking facilities and approaches thereto."

(b) The heading of such section 129 is amended by striking out "Ferries" and inserting in lieu thereof "Marine Highway Facilities".

(c) The table of contents of chapter 1 of title 23, United States Code is amended by striking out "ferries" in the matter relating to section 129 and inserting in lieu thereof "marine highway facilities".

CONTROL OF OUTDOOR ADVERTISING

SEC. 16. (a) Section 131(b) of title 23, United States Code, is amended to read as follows:

"(b) On or after January 1, 1971, or after the expiration of the next regular session of a State legislature, whichever is the later, Federal-aid highway funds apportioned to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are visible from the main traveled way of the system and not otherwise permitted pursuant to subsection (d) of this section, shall be reduced for the first year of noncompliance by amounts equal to 5 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, with the reduction of an additional 1 per centum for each succeeding year of noncompliance but not in excess of a total of 10 per centum until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever a State has made adequate provision for effective control as required by this section but is unable to carry out such provision because of a declaration by a court of competent jurisdiction or a ruling of the attorney general of such State, then the Secretary may suspend the application of this subsection to such State until sixty days after the adjournment of the next session of the State legislature having authority to consider such declaration or ruling. Should a constitutional amendment be required, the application of this subsection shall be suspended until the Secretary, taking into consideration the constitutional processes of the State involved, determines that the State has had a reasonable opportunity to make adequate provision for effective control in accordance with this section."

(b) Section 131(c) of title 23, United States Code, is amended to read as follows:

"(c) Effective control means that after January 1, 1971, or after the expiration of the next regular session of a State legislature, whichever is the later, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, information in the specific interest of the traveling public, signs, and notices pertaining to natural wonders, scenic and historical attractions, which are required or permitted by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located."

(c) Section 131(d) of title 23, United States Code, is amended to read as follows:

"(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section."

(d) Section 131(e) of title 23, United States Code, is amended to read as follows:

"(e) Any sign, display, or device to which subsection (g) of this section is applicable shall be required to be removed on a scheduled basis as the Federal share of just compensation becomes available for this purpose. The schedule shall be determined by agreement between the Secretary and the State. Unless the Federal share of just compensation is not available, no schedule shall extend beyond the end of the fifth year after such signs, displays, and devices have become nonconforming under State law. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming."

(e) Section 131(g) of title 23, United States Code, is amended to read as follows:

"(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

"(1) those lawfully in existence on October 22, 1965,

"(2) those lawfully on any highway made a part of the Interstate or primary system on or after October 22, 1965, and before January 1, 1968, or the effective date of a State law enacted to comply with this section, whichever is the later,

"(3) those lawfully erected on or after January 1, 1968, or the effective date of a State law enacted to comply with this section, whichever is the later, and

"(4) those lawfully in existence beyond six hundred sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the Interstate System and the primary system on the effective date of a State law enacted to control such signs, displays, and devices.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

"(A) the taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

"(B) the taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon."

(f) Section 131 of title 23, United States Code, is amended by adding thereto:

"(o) The Secretary is authorized to enter into agreements with one or more States for the purposes of carrying out demonstration projects to determine the best means of accomplishing the purpose of this section. Preference shall be given to any State or States which have undertaken agreements with the Secretary and private individuals or business concerns to carry out the provisions of this section. Any such agreement shall provide for the payment of the Federal share, prescribed in subsection (g), of the cost of the program, and shall be in accordance with the other provisions of this section to the extent applicable for the purpose of this subsection. Not to exceed $15,000,000 of the funds authorized to be appropriated for each of the fiscal years ending June 30, 1971, and June

30, 1972, for carrying out this section shall be available to carry out this subsection."

CONTROL OF JUNKYARDS

SEC. 17. (a) Section 136(b) of title 23, United States Code, is amended to read as follows:

"(b) On or after January 1, 1971, or after the expiration of the next regular session of a State legislature, whichever is the later, Federal-aid highway funds apportioned to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are visible from the main traveled way of the system, shall be reduced for the first year of noncompliance by amounts equal to 5 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, with the reduction of an additional 1 per centum for each succeeding year of noncompliance, but not in excess of a total of 10 per centum, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State."

(b) Section 136(c) of title 23, United States Code, is amended to read as follows:

"(c) Effective control means that by January 1, 1971, or after the expiration of the next regular session of a State legislature, whichever is the later, such junkyards shall be screened by natural object, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight. Junkyards which are lawfully in existance and which the State finds suitable for screening shall be screened within five years, after January 1, 1971, or the effective date of a State law enacted to comply with this section, whichever is the later."

(c) Section 136(g) of title 23, United States Code, is amended to read as follows:

"(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary."

(d) Section 136(h) of title 23, United States Code, is amended to read as follows:

"(h) Any junkyard to which subsection (j) of this section is applicable shall be required to be removed on a scheduled basis as the Federal share of just compensation becomes available for this purpose. The schedule shall be determined by agreement between the Secretary and the State. Unless the Federal share of just compensation is not available, no schedule shall extend beyond the end of the fifth year after such junkyards have become nonconforming under State law. Any other junkyard lawfully established which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming."

(e) Section 136(i) of title 23, United States Code, is amended to read as follows:

"(i) The Federal share of the State's costs for landscaping, screening, relocation, removal, or disposal under this section shall be 75 per centum."

(f) Section 136(j) of title 23, United States Code, is amended to read as follows:

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

"(1) those lawfully in existence on October 22, 1965,

"(2) those lawfully along any highway made a part of the Interstate or primary system on or after October 22, 1965 and before January 1, 1968, or the effective date of a State law enacted to comply with this section, whichever is the later,

"(3) those lawfully established on or after January 1, 1968, or the effective date of a State law enacted to comply with this section, whichever is the later, and

"(4) those lawfully in existence beyond one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the Interstate System and the primary system on the effective date of a State law enacted to control such junkyards.

The Federal share of such compensation shall be 75 per centum."

LANDSCAPING AND SCENIC ENHANCEMENT

SEC. 18. Section 319(b) of title 23, United States Code, is amended to read as follows:

"(b) An amount equivalent to 3 per centum of the funds apportioned to a State for Federal-aid highways for any fiscal year shall be allocated to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities, including information center buildings, within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. The provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this subsection after June 30, 1967."

STUDY OF ON-PREMISE SIGNS

SEC. 19. The Secretary is hereby authorized and directed to conduct a comprehensive study of on-premise signs which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located, in order to evaluate such signs in relation to section 131 of title 23, United States Code. The Secretary shall submit a report of such study, together with recommendations, to the Congress not later than January 1972.

URBAN TRANSPORTATION PLANNING

SEC. 20. Section 134 of title 23, United States Code is amended by adding at the end thereof the following:

"No highway project may be constructed in any urban area of fifty thousand population or more unless the responsible public officials of such urban area in which the project is located have been consulted and their views considered with respect to the corridor, the location and the design of the project."

URBAN AREA TRAFFIC OPERATIONS IMPROVEMENT PROGRAMS

SEC. 21. Subsection (b) of section 135 of title 23, United States Code, is amended to read as follows:

"(b) The Secretary may approve under this section any project on an extension of the Federal-aid primary or secondary system in urban areas for improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and loading and unloading ramps, if such project is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title."

FRINGE AND CORRIDOR PARKING FACILITIES

SEC. 22. (a) Section 137 of title 23, United States Code, is amended to read as follows:

"§ 137. Fringe and corridor parking facilities

"(a) The Secretary may approve as a project on any Federal-aid urban system the acquisition of land adjacent to the right-of-way outside a central business district, as defined by the Secretary, and the construction of publicly owned parking facilities thereon or within such right-of-way, including the use of the air space above and below the established grade line of the highway pavement, to serve an urban area of fifty thousand population or more. Such parking facility shall be located and designed in conjunction with existing or planned public transportation facilities. In the event fees are charged for the use of any such facility, the rate thereof shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

"(b) The Secretary shall not approve any project under this section until—

"(1) he has determined that the State, or the political subdivision thereof, where such project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facilty;

"(2) he has entered into an agreement governing the financing, maintenance, and operation of the parking facility with such State, political subdivision, agency, or instrumentality, including necessary requirements to insure that adequate public transportation services will be available to persons using such facilities; and

"(3) he has approved design standards for constructing such facility developed in cooperation with the State highway department.

"(c) The term 'parking facilities' for purposes of this section shall include access roads, buildings, structures, equipment, improvements, and interests in lands.

"(d) Nothing in this section, or in any rule or regulation issued under this section or in any agreement required by this section, shall prohibit (1) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility constructed under this section, or (2) any such person from so operating such facility.

"(e) The Secretary shall not approve any project under this section unless he determines that it is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title."

(b) The analysis of chapter 1 of such title is amended by striking out the matter relating to section 137 and inserting in lieu thereof the following:

"137. Fringe and corridor parking facilities."

(c) Section 11 of the Federal-Aid Highway Act of 1968 is hereby repealed.

STUDY OF RELATIONSHIP OF HIGHWAY CONSTRUCTION TO PUBLIC TRANSPORTATION SERVICES

SEC. 23. The Secretary is authorized and directed to undertake an analysis and study of the relationship of highway construction and funding to public transportation services using highways and to report to the Congress recommendations, if any, no later than February 1, 1972.

ADDITIONS TO INTERSTATE SYSTEM

SEC. 24. The existing language of section 139 of title 23, United States Code, shall be

designated as subsection (a) and a new subsection (b) added as follows:

"(b) Whenever the Secretary determines that a highway on the Federal-aid primary system would be a logical addition or connection to the Interstate System and would qualify for designation as a route on that system in the same manner as set forth in paragraph 1 of subsection (d) of section 103 of this title, he may upon the affirmative recommendation of the State or States involved designate such highway as part of the Interstate System. Such designation shall be made only upon the written agreement of the State or States involved that such highway will be constructed to meet all the standards of a highway on the Interstate System within twelve years of the date of the agreement between the Secretary and the State or States involved. The mileage of any highway designated as part of the Interstate System under this subsection shall not be charged against the limitations established by the first sentence of section 103(d) of this title. The designation of a highway as part of the Interstate System under this subsection shall create no Federal financial responsibility with respect to such highway except that Federal-aid highway funds otherwise available to the State or States involved for the construction of Federal-aid primary system highways may be used for the reconstruction of a highway designated as a route on the Interstate System under this subsection. In the event that the State or States involved have not substantially completed the construction of any highway designated under this subsection within the time provided for in the agreement between the Secretary and State or States involved, the Secretary shall remove the designation of such highway as a part of the Interstate System. Removal of such designation as result of failure to comply with the agreement provided for in this subsection shall in no way prohibit the Secretary from designating such route as part of the Interstate System pursuant to subsection (a) of this section or under any other provision of law providing for addition to the Interstate System."

EQUAL EMPLOYMENT OPPORTUNITY

SEC. 25. Section 140 of title 23, United States Code, is amended by designating the existing language as subsection (a) and adding the following subsection:

"(b) The Secretary, acting through the Secretary of Labor, and in cooperation with any other department or agency of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer highway construction-related training and skill improvement programs. Whenever an apportionment is made under subsections 104 (b)(1), (b)(2), (b)(3), (b)(5), and (b)(6) of this title of the sums authorized to be appropriated for expenditure upon the Federal-aid primary and secondary systems, and their extensions within urban areas, the Interstate System, and the Federal-aid urban system the Secretary shall deduct such sums as he may deem necessary for administering the provisions of this subsection to be financed from the appropriation for the Federal-aid systems. Such sums so deducted shall remain available until expended. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary."

ADDITIONAL AUTHORIZATIONS IN CHAPTER 1

SEC. 26. (a) Chapter 1 of title 23, United States Code is amended by inserting at the end thereof the following new sections:

"§ 142. Construction of replacement housing

"(a) The Secretary may approve as a part of the cost of construction of any project under any Federal-aid program which he administers the cost of (1) constructing new housing, (2) acquiring existing housing, (3) rehabilitating existing housing, and (4) relocating existing housing, as replacement housing for individuals and families whenever he determines that a proposed project on any Federal-aid system cannot proceed to actual construction because replacement housing as certified by the Secretary of Housing and Urban Development is not available and cannot otherwise be made available as required by law. For the purposes of this subsection the term 'housing' includes all appurtenances thereto.

"(b) In carrying out the provisions of this section the Secretary shall consult with the Secretary of Housing and Urban Development. Whenever practicable, the services of State or local governmental housing agencies shall be utilized in carrying out this section.

"§ 143. Special bridge replacement program

"(a) Congress hereby finds and declares it to be in the vital interest of the Nation that a special bridge replacement program be established to enable the several States to replace bridges over major rivers or other topographical barriers when the States and the Secretary find that there is a significant importance of a bridge facility to serve the needs of the people of communities located along such river or topographical barrier and there is significant danger that the bridge may collapse.

"(b) The Secretary in consultation with the States shall (1) inventory all bridges located on any of the Federal-aid systems over navigable waters and other topographical barriers of the United States; (2) classify them according to their serviceability and safety; and (3) based on that classification, assign each a priority for replacement.

"(c) Whenever any State or States make application to the Secretary for assistance in replacing a bridge which the priority system, established under subsection (b) of this section shows to be unsafe and inadequate to serve the people of the communities involved and the traffic which it carries, the Secretary may approve Federal participation in the reconstruction of a comparable facility. In approving projects under this section, the Secretary shall give consideration to those projects which will remove from service bridges which are most in danger of failure and give consideration to the economy of the area involved. Approval of projects and allocation of funds under this section shall be without regard to allocation or apportionment formulas otherwise established under this title.

"(d) The Federal share payable on account of any bridge replacement under this section shall not exceed 75 per centum of the cost thereof.

"(e) For the purpose of carrying out the provisions of this section, there are hereby authorized to be appropriated out of the Highway Trust Fund, $150,000,000 for the fiscal year ending June 30, 1971; $150,000,000 for the fiscal year ending June 30, 1972; and $150,000,000 for the fiscal year ending June 30, 1973, to be available until expanded. Such funds shall be available for obligation at the beginning of the fiscal year for which authorized.

"(f) The Secretary shall report annually on projects approved under this section with any recommendations he may have for further improvement in the special bridge replacement program authorized in accordance with this section."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following:

"Sec. 142. Construction of replacement housing.

"Sec. 143. Special bridge replacement program.

HIGHWAY SAFETY

SEC. 27. Subsection (c) of section 402 of title 23, United States Code, is amended by striking out beginning in the second sentence thereof "as Congress, by law enacted hereafter," and all that follows down through and including the period at the end of the third sentence thereof and inserting in lieu thereof the following: "75 per centum in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 per centum in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subsection, a 'public road' means any road under the jurisdiction of, and maintained by, a public authority and open to public travel. The annual apportionment to each State shall not be less than one-third of 1 per centum of the total apportionment."

TERRITORIAL HIGHWAY PROGRAM

SEC. 28. (a) Chapter 2 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 215. Territorial highway program

"(a) Recognizing the mutual benefits that will accrue to the Virgin Islands, Guam, and American Samoa, and to the United States from the improvement of highways in such territories of the United States, the Secretary is authorized to assist each such territorial government in a program for the construction and improvement of a system of arterial highways, and necessary interisland connectors designated by the Governor of such territory and approved by the Secretary. Federal financial assistance shall be granted under this subsection to such territories upon the basis of a Federal contribution of 70 per centum of the cost of any project.

"(b) In order to establish a long-range highway development program, the Secretary is authorized to provide technical assistance for the establishment of an appropriate agency to administer on a continuing basis highway planning, design, construction and maintenance operations, the development of a system of arterial and collector highways, including necessary interisland connectors, and the establishment of advance acquisition of right-of-way and relocation assistance programs.

"(c) No part of the appropriations authorized under this section shall be available for obligation or expenditure with respect to any territory until the Governor enters into an agreement with the Secretary providing that the government of such territory (1) will design and construct a system of arterial and collector highways, including necessary interisland connectors, built in accordance with standards approved by the Secretary; (2) will not impose any toll, or permit any such toll to be charged, for use by vehicles or persons of any portion of the facilities constructed or operated under the provisions of this section; (3) will provide for the maintenance of such facilities in a condition to adequately serve the needs of present and future traffic; (4) will implement standards for traffic operations and uniform traffic control devices which are approved by the Secretary.

"(D)(1) Three per centum of the sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section shall be available for expenditure only for engineering and economic surveys and investigations, for the planning of future highway programs and the financing thereof, for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof, and for research and development, necessary

in connection with the planning, design, and maintenance of the highway system, and the regulation and taxation of their use.

(2) In addition to the percentage provided in paragraph (1) of this subsection, not to exceed 2 per centum of sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section may be expended upon request of the Governor and with the approval of the Secretary for the purposes enumerated in paragraph (1) of this subsection.

"(e) None of the funds authorized to be appropriated for carrying out this section shall be obligated or expended for maintenance of the highway system.

"(f) The provisions of chapters 1 and 5 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section."

(b) The analysis of chapter 2 of title 23, United States Code, is amended by adding at the end thereof the following:

"215. Territories highway development program."

(c) There are hereby authorized to be appropriated out of the Highway Trust Fund for carrying out subsection (a) of section 215 of title 23, United States Code, not to exceed $2,000,000 for each of the territories listed in such section for the fiscal year ending June 30, 1971, and for each of the two succeeding fiscal years.

(d) Sums authorized to be appropriated for the fiscal year ending June 30, 1971, shall be available for obligation immediately upon enactment of this section in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code. Sums authorized to be appropriated for the fiscal year ending June 30, 1972, and the fiscal year ending June 30, 1973, shall be available for obligation at the beginning of the fiscal year for which authorized in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code.

DARIEN GAP HIGHWAY

SEC. 29. (a) Chapter 2 of title 23, United States Code, is amended by adding at the end thereof the following additional section:

"§ 216. Darien Gap Highway

"(a) The United States shall cooperate with the Government of the Republic of Panama and with the Government of Colombia in the construction of approximately two hundred and fifty miles of highway in such countries in the location known as the Darien Gap to connect the Inter-American Highway authorized by section 212 of this title with the Pan American Highway System of South America. Such highway shall be known as the Darien Gap Highway. Funds authorized by this section shall be obligated and expended subject to the same terms, conditions, and requirements with respect to the Darien Gap Highway as are funds authorized for the Inter-American Highway by subsection (a) of section 212 of this title.

"(b) The construction authorized by this section shall be under the administration of the Secretary, who shall consult with the appropriate officials of the Department of State with respect to matters involving the foreign relations of this Government, and such negotiations with the Governments of the Republic of Panama and Colombia as may be required to carry out the purposes of this section shall be conducted through, or authorized by, the Department of State.

"(c) The provisions of this section shall not create nor authorize the creation of any obligations on the part of the Government of the United States with respect to any expenditures for highway survey or construction heretofore or hereafter undertaken in Panama or Colombia, other than the expenditures authorized by the provisions of this section.

"(d) Appropriations made pursuant to any authorization for the Darien Gap Highway shall be available for expenditure by the Secretary for necessary administrative and engineering expenses in connection with the Darien Gap Highway program.

"(e) For the purposes of this section the term 'construction' does not include any costs of rights-of-way, relocation assistance, or the elimination of hazards of railway grade crossings."

(b) The analysis of chapter 2 of title 23, United States Code, is hereby amended by adding at the end thereof the following:

"216. Darien Gap Highway.".

(c) There is hereby authorized to be appropriated not to exceed $100,000,000, to remain available until expended, to enable the Secretary of Transportation to carry out section 216 of title 23, United States Code.

INTEREST PAYMENTS FOR REPLACEMENT HOUSING

SEC. 30. Section 506 of title 23, United States Code is amended by redesignating subsection (b) as subsection (c) and inserting a new subsection (b) as follows:

"(b) In addition to the amounts otherwise authorized by this title, the State agency shall make an interest payment to compensate such owner for any increased rate of interest which such owner is required to pay for financing such replacement dwelling.

"This interest payment shall be computed and allowed only if there was an existing mortgage against the dwelling transferred to the State and such mortgage was a valid lien on said premises for at least one year prior to the institution of negotiations for the acquisition of such property, and if the mortgage for the replacement dwelling bears a higher rate of interest than the interest rate on the mortgage of the transferred dwelling; but, in no event shall such interest on the replacement dwelling be greater than the maximum interest allowable under State law.

"The value of the interest payment shall be the difference in the interest rate existing on the balance of any mortgage on a transferred dwelling and the interest rate on the mortgage of the replacement dwelling for the remainder of the term of any such mortgage on such transferred dwelling reduced to discounted present value.

"The discount rate as above provided shall be the maximum rate of interest permitted to be paid on savings deposits by any savings bank within the State pursuant to the rules and regulations of the Federal Deposit Insurance Corporation."

EFFECTIVE DATE OF CHAPTER 5

SEC. 31. Section 37 of the Federal-Aid Highway Act of 1968 (82 Stat. 836), is amended to read as follows:

"(a) Except as otherwise provided in subsection (b) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment, except that until July 1, 1970, sections 502, 505, 506, 507, and 508 of title 23, United States Code, as added by this Act, shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. Except as otherwise provided in subsection (b) of this section, after July 1, 1970, such sections shall be completely applicable to all States. Section 133 of title 23, United States Code, shall not apply to any State if sections 502, 505, 506, 507, and 508 of title 23, United States Code, are applicable in that State, and effective July 1, 1970, such section 133 is repealed, except as otherwise provided in subsection (b) of this section.

"(b) In the case of any State (1) which is required to amend its constitution to comply with sections 502, 505, 506, 507, and 508 of title 23, United States Code, and (2) which cannot submit the required constitutional amendment for ratification prior to July 1, 1970, the date of July 1, 1970, contained in subsection (a) of this section shall be extended to January 1, 1971."

ALASKA HIGHWAY

SEC. 32. (a) The President, acting through the Secretaries of State and Transportation, is authorized to undertake negotiations with the Government of Canada for the purpose of entering into a suitable agreement authorizing paving and reconstructing the Alaska Highway from Dawson Creek, Canada (including a connecting highway to Haines, Alaska), to the Alaska border, including, but not limited to, necessary highway realinement.

(b) The President is requested to report to Congress not later than one year after the date of enactment of this section the results of his negotiations under this section.

ALASKAN ASSISTANCE

SEC. 33. (a) Subsection (b) of section 7 of the Federal Aid Highway Act of 1966 is amended to read as follows:

"(b) There is hereby authorized to be appropriated for construction and maintenance of highways of the State of Alaska, out of the Highway Trust Fund and in addition to funds otherwise made available to the State of Alaska under title 23, United States Code, $20,000,000 for each of the fiscal years ending June 30, 1972, and June 30, 1973."

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321(d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

DISTRICT OF COLUMBIA

SEC. 34. Subsections (a), (b), and (c) of section 23 of the Federal-Aid Highway Act of 1968 are hereby repealed.

BILLS INTRODUCED

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

By Mr. CURTIS (for himself and Mr. HRUSKA):

S. 4414. A bill to amend the Internal Revenue Code of 1954 to make it clear that independent truck dealers and distributors who install equipment or make minor alterations on tax-paid truck bodies and chassis are not to be subject to excise tax as manufacturers on account thereof; to the Committee on Finance.

By Mr. COTTON:

S. 4415. A bill for the relief of Niki Vomvolaki; to the Committee on the Judiciary.

By Mr. MOSS:

S. 4416. A bill for the relief of Miss Maike Hannemann; to the Committee on the Judiciary.

By Mr. FONG:

S. 4417. A bill for the relief of Chang Shee Pang (Chang Chung Kyau); to the Committee on the Judiciary.

By Mr. RANDOLPH:

S. 4418. A bill to authorize appropriations for the fiscal years 1972 and 1973 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes; placed on the calendar.

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

By Mr. FANNIN:

S. 4419. A bill to provide for medical and hospital care through a system of voluntary health insurance, to establish a national program for protection against catastrophic illness, to provide for peer review of health services provided under Federal programs, and for other purposes; to the Committee on Finance.

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

ADDITIONAL COSPONSORS OF BILLS

S. 1466

Mr. HANSEN. Mr. President, on March 11, 1969, I introduced a bill to designate the Stratified Primitive Area as a part of the Washakie Wilderness, heretofore known as the South Absaroka Wilderness in the Shoshone National Forest in Wyoming.

I ask unanimous consent that, at the next printing, my colleague, the senior Senator from Wyoming (Mr. MCGEE) be added as a cosponsor.

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

S. 2453

At the request of the Senator from New Jersey (Mr. WILLIAMS), the Senator from Washington (Mr. MAGNUSON) was added as a cosponsor of S. 2453, the Equal Employment Opportunities Enforcement Act.

ENROLLED BILL AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, September 30, 1970, he presented to the President of the United States the following enrolled bill and joint resolutions:

S. 3558. An act to amend the Communications Act of 1934 to provide continued financing for the Corporation for Public Broadcasting;

S. 3637. An act to revise the provisions of the Communications Act of 1934 which relate to political broadcasting;

S.J. Res. 218. Joint resolution providing for the designation of a "Day of Bread" and "Harvest Festival Week"; and

S.J. Res. 228. Joint resolution to authorize the President to designate the period beginning October 5, 1970, and ending October 9, 1970, as "National PTA Week."

INCREASED RESEARCH INTO DRUG ABUSE AND DRUG DEPENDENCE—AMENDMENTS

AMENDMENTS NOS. 979 THROUGH 981

Mr. ERVIN submitted three amendments, intended to be proposed by him, to the bill (H.R. 18583) to amend the Public Health Service Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse, which were ordered to lie on the table and to be printed.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT AMENDMENTS OF 1970—AMENDMENTS

AMENDMENTS NOS. 982 AND 983

Mr. CRANSTON submitted two amendments, intended to be proposed by him, to the bill (H.R. 17825) to amend the Omnibus Crime Control and Safe Streets Act of 1968, and for other purposes, which were ordered to lie on the table and to be printed.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT—AMENDMENTS

AMENDMENTS NOS. 984 THROUGH 1000

Mr. ERVIN submitted 17 amendments, intended to be proposed by him, to the bill (S. 2453) to further promote equal employment opportunities for American workers, which were ordered to lie on the table and to be printed.

NOTICE OF HEARING ON CERTAIN NOMINATIONS

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Wednesday, October 7, 1970, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

Robert H. McWilliams, Jr., of Colorado, to be U.S. circuit judge for the 10th circuit, vice Jean S. Breitenstein, retired.

Edward R. Becker, of Pennsylvania, to be U.S. district judge, eastern district of Pennsylvania, a new position created under Public Law 91–272, approved June 2, 1970.

J. William Ditter, Jr., of Pennsylvania, to be U.S. district judge, eastern district of Pennsylvania, a new position created by Public Law 91–272, approved June 2, 1970.

Daniel H. Huyett III, of Pennsylvania, to be U.S. district judge, eastern district of Pennsylvania, a new position created under Public Law 91–272, approved June 2, 1970.

William W. Knox, of Pennsylvania, to be U.S. district judge, western district of Pennsylvania, a new position created by Public Law 91–272, approved June 2, 1970.

L. Clure Morton, of Tennessee, to be U.S. district judge, middle district of Tennessee, vice William E. Miller, elevated.

Malcolm Muir, of Pennsylvania, to be U.S. district judge, middle district of Pennsylvania, a new position created by Public Law 91–272, approved June 2, 1970.

Sam C. Pointer, Jr., of Alabama, to be U.S. district judge, northern district of Alabama, a new position created under Public Law 91–272, approved June 2, 1970.

Walter K. Stapleton, of Delaware, to be U.S. district judge, district of Delaware, vice Edwin D. Steel, Jr., retired.

Donald W. Van Artsdalen, of Pennsylvania, to be U.S. district judge, eastern district of Pennsylvania, a new position created under Public Law 91–272, approved June 2, 1970.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Nebraska (Mr. HRUSKA), and myself as chairman.

NOTICE OF HEARING ON DRUG ABUSE

Mr. EAGLETON. Mr. President, on behalf of the chairman (Mr. TYDINGS), I ask unanimous consent that this hearing notice be printed in the RECORD.

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

Notice of hearing on drug abuse in the Washington Metropolitan Area.

Mr. TYDINGS. Mr. President, as Chairman of the Senate Committee on the District of Columbia, I wish to give notice that a hearing on Drug Abuse in the Washington Metropolitan Area will be held on Friday, October 2, 1970. The hearing will begin at 10:00 a.m. in Room 6226 of the New Senate Office Building.

Individuals and representatives of organizations who wish to testify at the hearing should notify Mr. Al From at 225–4161, prior to 5 P.M. October 1, 1970.

Written statements, in lieu of personal appearance, are welcomed and may be submitted to the Staff Director, Room 6218, New Senate Office Building, Washington, D.C. 20510, for inclusion in the hearing record.

ADDITIONAL STATEMENTS OF SENATORS

LEGITIMATE DISSENT AND ACTS OF VIOLENCE

Mr. MCCLELLAN. Mr. President, on September 13, 1970, the Akron, Ohio, Beacon Journal published an editorial entitled "A Call to Reason—America in Peril." The editorial draws the line of demarcation between proper and legitimate dissent and acts of violence and protest by revolutionaries and professional anarchists. It reminds us of and emphasizes the gathering storms of social unrest and of increased crime, corruption, and subversion that present a growing menace which threatens the security of our traditional institutions and the survival of our system of government.

I commend the reading of this strong and timely editorial to Members of Congress and to all other Americans. It is a potent reminder that we must strengthen and reenforce our efforts to repel the deliberate internal assaults that are being made on our free society and on the basic principles of liberty, equality, and justice under rule of law, upon which our Nation was founded.

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

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

A CALL FOR REASON—AMERICA IN PERIL

What has happened to America?

Why, in our madness, do we turn to riots and destruction, to contempt for revered institutions which made the American dream possible, to nostrums instead of cures for our economic ills, to sleazy, cheap political

devices rather than exercising at least a modicum of statesmanship?

Are we indeed a part of the world revolution which seeks only to destroy while parading under the banners of democracy, Marxist style?

Why are Americans, who enjoy greater freedoms under our Constitution than are permitted anywhere else in the world, berating "the system" which makes these precious liberties possible?

How long must we permit a small band of revolutionaries to disrupt our colleges and universities, to bomb government research centers, kill innocent people and ruin the careers of devoted scientists?

What kind of a country do we live in where the flouting of law has become a national pastime, where a law officer automatically becomes a "pig," an object of derision and attack by an untutored, undisciplined and unprincipled rabble?

Where indeed, are our leaders, the parents of our youth, the educators and the great body of law abiding, responsible citizens?

Are the leaders too politically oriented, too concerned with their personal ambitions to stand up and be counted?

Have the educators become so supine, so dependent upon government grants or so cowardly that they stand meekly by while their institutions of learning are defiled and brought to heel by roving bands of professional anarchists?

Must we yield to the sophistry that the right of dissent—as stated so forthrightly in Article I of the Bill of Rights—can be taken as license by those willful violators of the law who cannot distinguish between dissent and disobedience?

Ironically, the destroyers who abuse our Constitutional liberties would find themselves prisoners of the Marxist police state of the authoritarian world to which they give such frenetic devotion.

The greatest of all government documents—the United States Constitution—provides ample safeguards against tyranny and injustice.

Yet the Center for the Study of Democratic Institutions has drafted a new constitution for the United States that would concentrate all authority in the national government, strengthen the Presidency, weaken the national judiciary and create new branches of government to oversee planning, elections and economic regulations.

Dr. Rexford G. Tugwell, 79-year-old former member of Franklin D. Roosevelt's "brain trust" and author of the document, observes that cherished traditions and institutions which no longer serve the needs of modern society must be pulled down as "impediments to progress."

Along with the Black Panthers, who have also put together a new constitution, Dr. Tugwell typifies the fuzzy and radical left who would tear apart our system of government while offering the absolute authority of statism in its place.

These are the true revolutionaries—along with socialists in the teaching profession—who are more to be feared than college youth expressing their frustrations on the campus.

Yes, our young people are being taught that there is something inherently evil about the capitalistic system, that its rewards for the industrious and thrifty segments of our society are unfair, that a "people's capitalism" would somehow solve all of our problems.

Why is it, Americans, that we of the world's most affluent society now wish to embrace the fatuous economic doctrines which have failed so miserably wherever they have been tried?

Are we like the lemmings who migrate at intervals to their own destruction?

Where were our statesmen when Congress fueled the fires of inflation by passing a "tax reform measure" which insured a huge deficit?

Can you tell us, please, why such responsible Negro leaders as Whitney Young and Roy Wilkins constantly criticize the total community for the excesses of young blacks while making no substantial contribution of their own in the direction of restraint?

Does it bug you that elementary school teachers once dedicated to character building are now setting a sorry example for our youth with their union-directed strikes on the eve of a new school year?

Or that labor's power monopoly is able to cripple the economy by making a farce of collective bargaining?

Can these distortions of an orderly society be attributed solely to the war in Indochina? Or is the current unrest symptomatic of a world society in revolution?

Whatever the cause, this is a time for the rededication of all Americans to the proposition, as stated in the preamble of the Constitution, that this nation was conceived to "form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

These were the wise and profound thoughts of our Founding Fathers.

That we have strayed so far from the paths of righteousness is a serious indictment of the weaknesses of man who in the almost 200 years of our Republic now finds himself for the first time seemingly incapable of constructive self-government.

For our enemies within would destroy the Union, make a mockery of justice, insure domestic anarchy, gut the national defense, disregard the general welfare and repress the blessings of liberty.

This is what is happening to America, known in happier days as the land of the free and the home of the brave.

JOHN S. KNIGHT.

NATIONAL NEWSPAPER WEEK

Mr. SYMINGTON. Mr. President, "A newspaper," wrote the official Licenser of the Press in the London of 1680, "makes the multitude too familiar with the actions and councils of their superiors and gives them not only an itch but a kind of—right and license to be meddling with the government." The case for freedom of the press has never been better stated. There is a sense in which all our hard-won liberties are related to and dependent upon freedom of speech and freedom of the press, the vehicle of free expression.

In celebrating National Newspaper Week, we are also remembering the chief function of the American newspaper—the dissemination of information and opinion to all the people in a manner free of governmental restraint or control. The history of our free press is intimately bound up with the long, often bitter struggle for freedom of speech.

Two hundred years ago, during the fierce controversies which led directly to our revolution, Alexander McDougall, patriot and leader of the Sons of Liberty, was arrested by the Colonial authorities for having issued a broadside, attacking the highly unpopular law requiring the quartering of British troops in American homes. Street fighting flared in the so-called battle of Golden Hill. Eventually, McDougall was tried, convicted and imprisoned for contempt. The arrest of Alexander McDougall, his refusal to post bond and his steadfast plea of not guilty, served to dramatize the growing conflict over free speech as against governmental coercion. It is a timely reminder today of the dangers inherent in every arbitrary limitation upon the inalienable right of free expression.

The Hartford Courant, America's oldest newspaper in continuous publication was first published in 1764—just over two centuries ago. In 1775 there were only 37 newspapers in all the 13 colonies: All were weeklies, except the Pennsylvania Evening Post which later became the first American daily.

In the State of Missouri as in the Nation at large, we are blessed with a strong, healthy press, vigorously outspoken on the issues of the day and faithful to our common commitment to freedom.

Missourians can be especially proud of our news media, for the history of American journalism has deep roots in our State.

Missouri has 285 weekly and 53 daily papers, plus four metropolitan dailies and 15 Sunday papers.

Each county in Missouri has at least one newspaper. Most have more than one; and in every county and city, our newspapers provide invaluable services while at the same time they champion the best interests of their readers.

Most Missouri papers are members of the Missouri Press Association, which will celebrate its 104th birthday at an annual convention in St. Louis this fall. The association is providing outstanding leadership in our State by stimulating better journalism along with freedom of the press.

Missouri is a major national center for news wire service. Both the Associated Press and United Press International have outstanding staffs and news facilities in our State.

The University of Missouri's world famous school of journalism, not only the first but the largest school of its kind, is recognized by many as the best. It has produced many of America's leading newspapermen and broadcasters.

In addition, this school of journalism is making a significant contribution through its unique Freedom of Information Center.

We are fortunate to have so many fine communications resources, and can be proud that each Missouri paper, station, and trained journalist, by helping each of us to be well informed, plays a vital role in our democratic system.

In 1808, Missouri's first newspaper, Missouri Gazette, was published by Joseph Charless. While Charless had only 174 original subscribers in those pioneer days, Missouri newspapers today have a combined circulation of 3,577,370.

Journalism in Missouri has had many great leaders, Joseph Pulitzer the founder of the St. Louis Post-Dispatch, and William Rockhill Nelson the founder of the Kansas City Star, to name but two. In dozens of counties, weekly and daily editors have played outstanding roles in the development of their areas and in the preservation of the great traditions of journalism.

Today there is hardly a city or town in America which does not have at least

one newspaper; our major urban centers usually have several. Newspapers have become a vital factor in American life, both public and private.

As chairman of the Subcommittee on U.S. Security Agreements and Commitments Abroad, I am working to eliminate unnecessary Government secrecy, and I can report that the working press has been of tremendous assistance in bringing to public attention the extent of today's secrecy problems. Without the news media, our task would have been virtually impossible.

As a citizen, as a former newspaperman, and as a U.S. Senator, I count it a privilege to salute the newspapers of Missouri and the Nation during this anniversary week and to commend their dedication to those fundamental guarantees of our historic rights: freedom of speech, and freedom of the press—rights as inseparable today as in the past, rights which offer us the best hope for the future of America.

THE NATION'S ECONOMY

Mr. BYRD of West Virginia. Mr. President, I believe that the Government's anti-inflation policies have accomplished their purpose. The cost-of-living increase last month was only two-tenths of 1 percent—the smallest increase in nearly 2 years. This is welcome news to the wage earner and to the housewife who must buy food for the family. Now it is time to reduce interest rates and ease restrictive monetary policies that are retarding economic growth. It is time to stimulate home building, plant expansion, business recovery, and full employment. These are steps which must be taken to solve our country's pressing economic problems.

WOLD PROPOSES GENERATING POWER BY HARNESSING VOLCANIC STEAM

Mr. GRIFFIN. Mr. President, a distinguished colleague in the other body, Representative JOHN WOLD, of Wyoming, wrote an excellent article recently for the North American Newspaper Alliance in which he conveyed his deep concern for the manner in which we will generate electrical power in a nation rapidly approaching a dangerous shortage of energy.

Mr. WOLD's article appeared in many newspapers, including the Detroit News of Sunday, September 13.

Mr. WOLD, the only geologist serving in Congress, describes the enormous force of such geological phenomena as Old Faithful geyser in Yellowstone National Park. The geysers and the geothermal system of which they are a part are completely clean, Mr. WOLD noted; and "what is more important, the same geological forces which produce—them—may one day serve as one of America's major sources of power."

As NANA wrote in a preface to Mr. WOLD's article, the Congressman has made the energy shortage one of his primary concerns. Mr. WOLD's deep interest is both national and related to his State's development. Mr. WOLD notes in his article that the State and region could be the center of a vast system of clean power facilities harnessing the natural energy of the earth's stored heat.

Mr. WOLD, an ardent conservationist, sees great hope in the fact that geothermal power production is "extraordinarily desirable in this rightly environment-conscious day and age—there is no chance of water, air, or soil pollution."

Mr. President, I ask unanimous consent that Representative JOHN WOLD'S article be printed in the RECORD.

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

OUR UNTAPPED RESERVES—ENDING THE ENERGY CRISIS

(By Representative JOHN S. WOLD)

WASHINGTON.—Wild beautiful landscapes splashed with brilliant color . . . swirling, boiling natural springs . . . volcanoes of thickly bubbling mud . . . and more soaring, shimmering giant geysers than in all the rest of the world put together . . . bring some 3 million tourists to Wyoming's Yellowstone National Park each year.

The giant geysers are probably Yellowstone's "start." Thoroughly satisfied with the impressive size and beauty of these famous natural attractions, few of their millions of admirers realize (or care) why these beautiful geysers exist. They are the above-ground evidence of the incredible energy that still lies untapped beneath the earth's surface.

What is more important, the same geological forces which produce Yellowstone's Old Faithful may one day serve as one of America's major source of power.

No eventuality could be more welcome. The drive to find new national power source is becoming daily more acute. Truly suitable sources become harder and harder to find as America becomes more and more committed to producing that power without destroying the beauty of our national heritage.

That's what makes tapping underground energy the answer to a conservationist's prayer. It involves no defacement of existing national parklands and preserves. We already know of many isolated areas like the wilderness of Idaho where these long-buried reserves are equally available—and there are undoubtedly many more as yet undiscovered.

Twenty years of exploring natural power sources have convinced me that one of the best—perhaps the best—solution to our potential power shortage lies in what we geologists call "geothermals"—hot pockets of underground rock lying relatively close to the earth's surface, but almost always hidden. Where geothermals combine with lake and river water seeping down through subterranean channels, they produce the spectacular hot springs and geysers which indicate their presence—like Old Faithful, that Wyoming celebrity.

I am not alone in my estimate of the geothermals' importance; an exhaustive study of the feasibility of tapping this power and of imitating the process artificially is currently being conducted jointly by the United States Atomic Energy Commission (AEC) and the American Oil Shale Company (Battelle Northwest Laboratories).

Technically, the concept under study involves using an underground nuclear explosion to create a rock- or rubble-filled chimney in a geothermal area where natural subsurface water is not found. Optimum result is a cylinder or chimney about 300 to 400 feet in diameter.

Preliminary estimates indicate that such a chimney in rock of 600 degrees Centigrade at a depth of 7,000 to 8,000 feet below the earth's surface would produce enough energy to fuel a 200-megawatt electric generating plant for approximately 18 months—and one megawatt is equal to 1 million watts!

The method employed would be to pump water to the bottom of the shaft or chimney, where it would be heated and converted to steam. Pressurized, it would rise to the surface with tremendous force, thereby generating the enormous amounts of electricity indicated.

Such Chimneys have already been successfully employed in the Atomic Energy Commission's Plowshare gas stimulation projects "Gasbuggy" and "Rulison," and in over 250 underground explosions at the AEC's Nevada test site.

Actually, we would be far from the first people to enjoy some of the benefits of natural thermal power. Research tells us that, for thousands of years, Italians and Icelanders have been drawing heat from volcanoes to warm their homes. Even more to the point, New Zealand already has a "thermal power" plant in operation, producing around 400 megawatts of electricity annually.

Think what this new power supply will mean in the preservation of other natural resources now being threatened because they, too, are possible sources of the power that American people so desperately need. Newly available geothermal energy would allow Americans to leave our mountain streams undammed, our virgin stands of timber undefiled.

Equally important, geothermal power production is extraordinarily desirable in this rightly environment-conscious day and age. This is clean power—power produced in a closed, uncontaminated and uncontaminating system. The balance between man and nature (The "ecosystem") remains healthfully undisturbed; there is no chance of water, air or soil pollution.

And finally, geothermal power is relatively inexpensive: we are only harnessing forces that Nature is already providing free of charge. Of course, there will be costs—for construction, and processing, machinery, and so on—but the money and the methods are well within our grasp. When men are walking on a moon 238,855 miles away, surely they can sink a shaft into the earth a few thousand feet or so.

Make no mistake—we must develop a coherent, unified and sensible national energy policy. We must put an end to America's spendthrift dissipation of natural resources we cannot replace. Geothermal power is one answer to this enormously pressing problem, I believe—and we have found it in time.

Let us hope so from the very bottom of our hearts. For, unless we can find power generation systems that meet our staggering requirements without degrading our environment, we are facing destruction every bit as final as a nuclear bomb—merely a trifle slower and quieter.

THE VICE PRESIDENT AND THE FOUR STUDENTS

Mr. KENNEDY. Mr. President, the New York Times on September 26 published a column by Anthony Lewis, in the form of a letter to the Vice President relevant to the latter's appearance with four students on the David Frost program the prior evening.

Mr. Lewis examines the substance of the students questions and the lack of substance in the nonresponses offered by the Vice President. Senators will be interested, if they have not already examined the article. 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:

DEAR MR. VICE PRESIDENT

(By Anthony Lewis)

DEAR MR. VICE PRESIDENT: Congratulations on your coolness and quick articulation under fire from the four student critics on the David Frost show. I watched you tape the program, and I was impressed.

You kept bringing the discussion back to the subject likely to arouse the television viewers' emotions: student violence. Most effective, judging by the reaction of the studio audience, was your comment that violence "has existed in this country because of the disgusting and permissive attitude of the people in command of the college campuses."

As a political sally, that was great stuff. American parents love hearing that someone else—a band of conspiratorial teachers—is responsible for the rebellion of their children. But there is always the danger that a politician may begin to believe what he says. In this case, I think it would be unfortunate if you did.

The real reasons for the restlessness of the young in America are not obscure.

They are brought up on the creed of possession, sold hard by the advertising message that goods are happiness. But they soon find that possessions do not assure human satisfaction.

They know beauty; they have read about it. But they likely live in an esthetically arid suburb, and all around them they see the most beautiful of countries wantonly destroyed for reasons of private greed.

Their nation is the richest in history, but they see that it allows its poor to go hungry and its cities to decay, that its tax system encourages life on expense amounts and favors personal consumption over urgent social needs.

They see that the United States cannot bring itself to do as well as relatively impoverished Britain in providing a decent system of medical care; they need about large numbers of American doctors, the most prosperous anywhere, fiddling their tax returns.

They hear much about law and order, but they know that corruption is widespread among American politicians and law enforcement officers.

They are told that violence is evil, but they know that guns can be bought and sold in the United States as in no other civilized land. And they observe the President of the United States photographed happily with union leaders—some with criminal records—whose members have just made news by beating up young people opposed to the Vietnam war.

They have dinned into them from childhood the appeal of sensuality, assured that this cigarette or that car or deodorant will bring them sexual success. They see on every hand evidence of their elders' exploitation and commercialization of sex. Yet their own possibly naive efforts to express sexual feelings in an open, easy way are met by moralizing outcry and repression.

Those among them who have tried marijuana are lectured, on inadequate facts, about the potential danger; some are sent to jail. But they see billions spent, legally, to promote the use of the proven narcotic killers, alcohol and tobacco.

They are told by their political leaders that the Vietnam war was necessary to save the South Vietnamese from Communist savagery. But however real that threat was in 1954 or 1964, they know that even Lyndon Johnson or Dean Rusk would not have considered the price of American intervention—the price in dead Vietnamese, a ravaged culture, a polarized America—worth paying if it had been known in advance. And still we profess the same objectives.

It is the values of American life, sir, and the hypocrisy, that make the young so uneasy. What intelligent parent, including you, has not found his child troubled by those values, and challenging them? Violence is wrong. But if there is violence, it is hardly to be laid to college faculties.

"You're not listening," you were told on the Frost show by Eva Jefferson, that appealing Negro girl from Northwestern.

"You're not listening," you were told on the prospective mass television audience, not to her and the other students in the studio. And of course in political terms you were so right. In the short run, even the medium run, you are likely to profit by tuning out Eva Jefferson and those like her.

But one need have no purple glasses to recognize that many American college students these days have an extraordinarily clear and loving perception of this country. To ignore them, to jeer at them, may be profitable for you today. But it will be misery for America unless someone in power starts listening soon.

THREAT TO PRESS FREEDOM IN CHILE

Mr. TALMADGE. Mr. President, I invite the attention of Senators to an editorial published recently in the Washington Post regarding some of the consequences of the Chilean elections. It is entitled "Threat to Press Freedom in Chile" and cites a warning issued by the Inter-American Press Association concerning the strangulation of the free press in that Latin American country.

On October 24, the Chilean Congress will choose a new President as a result of the recent election in which none of the three candidates received an absolute majority. Dr. Salvador Allende, an avowed Marxist, while receiving the largest number of votes, was able to attract only 36 percent of the ballots cast. This means that he received support from only slightly more than one out of every three Chileans who went to the polls. Nevertheless, if elected by the Chilean Congress, he would become the first elected Marxist president in the Western Hemisphere.

Dr. Allende, with strong support by the established Communist Party in Chile, has made it perfectly clear that, in typical Marxist fashion, he will not tolerate dissent and thus has threatened to take over the powerful Mercurio newspaper chain which stanchly fought his election. The Chileans have been justly proud of their democratic form of government and its strong adherence to constitutional law. A free press is one of the strongest guarantees for the maintenance of truly democratic institutions. It is a shame to see the proud past of Chile threatened. All nations of the hemisphere should take seriously the warning of the Inter-American Press Association and support its fight for a free press in Chile.

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

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

[From the Washington Post, Sept. 22, 1970]

THREAT TO PRESS FREEDOM IN CHILE

The Inter-American Press Association has issued a most urgent and alarming warning about the threatened strangulation of the press in Chile. Earlier this month Salvador Allende, a Marixist supported by the Communist Party, won a plurality in the popular balloting for president, and since then, according to the IAPA, "Communist and Marxist forces and their allies" have attacked the country's independent media, causing the resignation or dismissal of journalists opposed to them and otherwise using union pressure and intimidation to bring the media under their control. El Mercurio, Chile's leading newspaper and one that has stoutly opposed Mr. Allende, has come under particularly heavy pressure. Its owner, Augusta Edwards, has refused to give in.

Mr. Allende's distaste for the influential Edwards newspaper chain and his stated intent to "liberate" the Chilean media from their "Commercial character," are all too well known. But implementation of such a policy is utterly incompatible with the preservation of the democratic system that, until now, has been Chile's pride. Mr. Allende received only 37 per cent of the popular vote and he needs the support of other parties in the runoff election in Congress on Oct. 24. The Christian Democrats, as a condition of their support, have demanded that he pledge to keep the democratic system intact. It is essential that Mr. Allende make such a pledge and even more essential that he move immediately to honor it by throwing his weight against those of his followers who, in his name, are threatening to turn Chile 1970 into Czechoslovakia 1948.

THOMAS D. MORRIS JOINS GENERAL ACCOUNTING OFFICE

Mr. PROXMIRE. Mr. President, over the past decade and a half, one of the most hard-working and dedicated public servants has been Thomas D. Morris. He is especially known for his work at the Department of Defense, where he served as Assistant Secretary of Defense for Installations and Logistics and, later, as Assistant Secretary of Defense for Manpower.

Numerous innovations and efficiencies followed from Thomas D. Morris' stewardship, especially the establishment of the Defense Supply Agency when knocking heads together was absolutely vital in substituting a single agency for a proliferation of individual service supply agencies which duplicated one another.

He was also responsible for the prompt and vigorous action which the Defense Department, in the 1960's, took on General Accounting Office criticism and reports; for the vastly improved procedures and large savings in the disposal of excess and surplus property; and for the reduction of "gold plating" in the procurement of defense items.

Everyone I know gives the highest marks to Thomas D. Morris for his work at the Pentagon in the area of supply and logistics. He filled one of the toughest jobs in the Government.

Now he joins the General Accounting Office as a Special Assistant to the Comptroller General. He is doing this in a period when the work of the GAO in the area of defense efficiency has taken on a new importance and a new meaning. The contributions to our national defense, the security of the country, and to the economic well-being of all Americans can be greatly enhanced by the actions of a vigorous congressional watchdog agency.

For my own part, I am delighted that the legislative branch of the Government now has the services of Tom Morris. He is to be congratulated for choosing this avenue of service, and Comptroller General Elmer B. Staats should

be praised for having the foresight and initiative to bring Tom Morris back to Government service. Only the country can benefit.

I ask unanimous consent that a release from the General Accounting Office announcing Tom Morris' appointment be printed at this point in the RECORD.

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

THOMAS D. MORRIS JOINS GENERAL ACCOUNTING OFFICE

Elmer B. Staats, Comptroller General of the United States, announced today the appointment of Mr. Thomas D. Morris as a Special Assistant to the Comptroller General, effective October 5, 1970.

Mr. Morris joins the General Accounting Office after extensive experience in Government and private industry in the management field. His governmental experience has been primarily in the Tennessee Valley Authority, the Bureau of the Budget, and the Department of Defense. During World War II, he served in the Navy from 1942 to 1945 as a member of the Navy Management Engineering Staff.

Following World War II, Mr. Morris joined the consulting firm of Cresap, McCormick and Paget as a partner and participated in studies by both Hoover Commissions. He also conducted management surveys for a number of Federal agencies and for private industry.

In 1956–57, he served in the Office of the Secretary of Defense in several capacities, including the position of Deputy Assistant Secretary for Supply and Logistics and as an Assistant to Deputy Secretary of Defense Reuben Robertson.

In 1958–59, Mr. Morris was director of management planning and assistant to the President of the Champion Paper and Fibre Company, following which he was appointed as Assistant Director for Management and Organization in the Bureau of the Budget. Beginning in 1961, Mr. Morris served for more than five years as Assistant Secretary of Defense for Installations and Logistics and, later, for more than two years as Assistant Secretary of Defense for Manpower. He is currently serving as Corporate Vice President of Dart Industries, located in Los Angeles.

In announcing the appointment, the Comptroller General expressed his pleasure in having an individual with Mr. Morris' extensive background in the management field available to assist in directing the increasing number of studies being made by the General Accounting Office having Government-wide significance.

Mr. and Mrs. Morris have two children: a son David, and a daughter Martha. They reside at 5223 Duvall Drive, Washington, D.C.

NATIONAL FARM-CITY WEEK

Mr. DOLE. Mr. President, Congress and the Nation are aware new farm legislation is pending in the Joint Conference Committee before final approval and passage.

Much has been said about limitation of Government payments to farmers the past year, but not enough has been told about the farmer's real contribution to the well-being of this Nation.

The October issue of Farm Journal magazine contains an editorial which tells this story very well. The editorial relates to the coming celebration of Farm-City Week in November and enumerates many ways the city population benefits from farm efforts as well as some of the problems the farmers face. I ask unanimous consent that the editorial be printed in the RECORD.

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

ELEVEN REASONS WHY YOU ARE NO. 1

Coming soon is National Farm-City Week, Nov. 20–26. The purpose of this week is to give farmers and city folks a chance to tell each other about their own business.

We think that you have a solid story to tell. Here are eleven positive points that you can make with trumpet and fanfare:

1. *Food is better than ever.* The quality is better; the selection is broader; and the safety is unmatched. Farmers are producing higher grades of food than ever before; the food leaves the farm in the best condition ever; and food processing methods maintain quality better.

2. *Food has more built-in services than ever.* Thanks to prepared mixes, new food combinations, and easy-to-prepare food innovations, housewives spend less time preparing food, get more uniform quality with less waste.

3. *Food prices have gone up less than other costs of living.* Between 1950 and 1969, food prices (home and eating out) increased 46%—while other living costs climbed 55%. What a surprise that is to a lot of people! One reason for the surprise: the monthly cost-of-living report out of the Department Labor usually highlights food costs. The news media play this up. Whenever a TV station does a program on the cost of living, where do they go? Down to the food store to interview shoppers.

4. *Food prices have increased less than wages.* Wages in manufacturing industries have climbed 122% since 1950—from $1.44 per hour to $3.19 last year—2½ times as much as the cost of food. A recent Gallup poll in New Jersey found that nearly nine out of ten city folks believe that food prices have gone up faster than wages.

5. *We spend less of our income for food than ever before.* We are now spending 14¢ per dollar of national personal income (before taxs) for food—11¢ for food eaten at home and 3¢ for food eaten "out." This is the lowest in history—and beats any other country.

6. *Food prices are the most reasonable of all the "essentials."* Let's say that rents, health care and taxes are "essentials." Rents have risen 50% and health care costs have soared 136% since 1950. And taxes, whew! Federal, state and local governments collected $71 billion in 1950—and a whopping $319 billion last year: 4½ times more!

7. *Nowhere is food as reasonable as in the United States.* In 1967 (most recent figures), we spent 19% of our private expenditures (after taxes and savings) for food. In the United Kingdom, it was 25%; in France, 29%; in West Germany, 33%; and in Russia, 55%.

8. Farmers' "take" has increased much less than in other parts of the food business. Since 1950, the prices that farmers get for food commodities have gone up only 17%—yet the prices farmers pay for everything climbed 46%. During the same time, food marketing costs—from farm to consumer—went up 51% to handle the same "market basket" of food. While we spend 14¢ per dollar of personal income for food, only 4.3¢ of this goes to the farmer.

9. Farmers are doing more than any other economic group to combat inflation. We get inflation and higher prices when money or wages increase faster than the output of goods. Farmers' output per man-hour is increasing three times faster than in non-farm industries. Output per man-hour in non-farm industries climbed 60% since 1950—but farmers' output per man-hour jumped 182%!

10. Our amazing farm productivity is a chief reason for our national affluence. The fact that we can spend 86¢ out of each dollar of personal income for things other than food allows us to support a wide range of consumer goods and services. We can pour money into education, the arts, household appliances, automobiles, sports, housing, highways, airplanes, electric power, hospitals,, etc. Only 5% of our population now live on farms—leaving 95% to produce other goods and services. One farm worker feeds 45 people.

In India where they have only 40¢ left per dollar after buying food, the economy can't get off its back. Russia has a third of her work force tied up producing food—she can marshal resources to go to the moon, but it's a disappointing trip to the Russian food store.

11. Farmers are industry's best customer, using each year ⅓ as much steel as the automobile industry; enough rubber to put tires on 85% of the new cars; and more petroleum than any other industry. Farming employs more people than any other industry and is the biggest customer for the products of the nation's workers. In 1970, farmers' production expenditures will reach $40 billion—with another $32 billion of family spending.

You have an impressive story to tell—and you can use Farm-City Week to be aggressive about telling it.

STATEMENT IN SUPPORT OF THE JELLYFISH CONTROL ACT

Mr. BOGGS. Mr. President, the Senate will soon take up for consideration H.R. 12943, a bill to extend the Jellyfish Control Act of 1966 for another 3 years. I wish to state my strong support for this bill and to urge its passage by the Senate.

In these days when we are paying special attention to the problems of environmental quality, it is important to recognize that jellyfish, like polluted water, threaten to destroy some of our finest beaches for the pleasure of bathers and some of our coastal waters for the use of fishermen.

The jellyfish problem touches many of us directly or indirectly. Most of us who have ever been to our Nation's beaches have experienced at one time or another the annoyance of jellyfish in the water and even the physical pain of their sting. By spoiling the pleasure of swimming and other water activities, jellyfish constitute a dangerous nuisance.

In my State of Delaware we have many beautiful beaches, but even they occasionally have been bothered by jellyfish. I am anxious that this blight be removed.

But jellyfish also pose a difficult and costly problem for commercial and fishing interests. On the Chesapeake Bay, for instance, jellyfish clog pump intakes and tangle the nets and lines of fishing boats.

There is no easy solution to the problems created by jellyfish. But until research into their life stages, growth, and reproduction was begun under the Jellyfish Control Act of 1966, relatively little was known of these creatures.

In the past 3 years some extremely important work has been done in this field. Maryland and Virginia have gathered valuable information on the life history, distribution, and seasonal occurrence of jellyfish in the Chesapeake Bay. Maryland has tested the tolerance of jellyfish to certain chemical control agents and is moving toward the development of an antitoxin to treat jellyfish

stings. Maryland is also experimenting with physical barriers that would restrict jellyfish from certain shoreline areas. Similar studies of local conditions are underway in Mississippi, Florida, Puerto Rico, Connecticut, and New York.

Much significant research has already been done, but the aim of this act—jellyfish control or elimination—will take many more years of study and experimentation. I believe it is crucial that we show our support for this valuable work by extending the authorizations for jellyfish control for an additional 3 years.

TAX RELIEF FOR SMALL BUSINESS

Mr. MOSS. Mr. President, it is my pleasure to join with the chairman and many other members of the Select Committee on Small Business in sponsoring the small business tax reform and relief bill of 1970.

This measure was recently introduced by the Senator from Nevada (Mr. BIBLE), climaxing a 3-year study by the Small Business Committee. The proposals thus draw upon a wide variety of sources including testimony by the most senior Treasury officials during the committee's 1967 hearings, the report of an advisory committee of businessmen submitted to the select committee in December of 1968, and the advice and recommendations of more than 2 dozen trade associations, tax, accounting, and small business organizations across the country.

As a former member of the Small Business Committee, I have a certain amount of pride in the bill. In the course of many hearings and other committee work, I learned firsthand of the problems of 5½ million American small businessmen who are trying to make a living in the face of the complex and burdensome effects of Federal, State, and local taxation as well as rising costs, high interest rates, and labor difficulties.

UTAH A SMALL BUSINESS STATE

My own State of Utah is predominantly one of small firms. Of the 18,093 business establishments statewide, the average employment is 12½ workers per firm—excluding agriculture, railroads, and nonprofit organizations. The overwhelming number of these, 17,825 or 98.5 percent have less than 100 employees. Only 32 companies have more than 500 employees.

Small firms are the least able to hire high-priced accountants and tax specialists, so the weight of all taxes and paperwork is disproportionately against them.

Because of this, I have felt for a long time that we needed an overhaul of the entire tax system from the small businessman's point of view. However, to begin this process in the right way takes a good deal of expertise. I noted that the Deputy Assistant Secretary of the Treasury for Tax Policy remarked before a session of the Federal Bar Association on September 18 that Senator BIBLE's tax bill is "a magnificent vehicle" for such a comprehensive review.

I wish to add my commendation to the Small Business Committee and its chairman, Senator BIBLE, for the dedication and effort which it took to formulate S. 4039.

In putting forward this bill, we are inviting the comment and criticism of private professional organizations, including the leading groups in Utah, so that the suggestions of all those interested can be included in an improved version of the bill to be resubmitted in the 92d Congress.

I plan to support strongly what I hope will be the forward progress of this legislation so that we may arrive at meaningful tax reform and relief for the small business community in Utah and throughout the Nation.

PRISONERS MAKE HEADLINES

Mr. GRIFFIN. Mr. President, an item appeared in today's newspapers which all Americans have been hoping for. The last hijack victims have been released by the Palestinian guerrillas.

This is welcome news not only to the hostages' families and friends, but for all those concerned with the illegal detention of innocent victims.

But there is another headline all of us are waiting for: the release announcement of another group of prisoners—the Americans still held by the North Vietnamese.

Some of those men have been captives over 5 years. Their families miss them no less than those of the hijack victims. The American Government is no less concerned for our men in North Vietnam than it has been over those in Jordan.

There is little we can say to the wives and children of the prisoners. Be patient? They have been patient for half a decade. Protest? To whom should they petition? North Vietnam has been insensitive to the most reasonable requests.

Still, we must not abandon our efforts to secure the release of these brave men. We must do everything possible to bring the day closer when we can pick up our morning newspapers and read: "Last Americans Released by Hanoi."

ADDRESS BY SENATOR HOLLINGS AT UNIVERSITY OF GEORGIA

Mr. TALMADGE. Mr. President, the University of Georgia was honored last week by the presence of Senator ERNEST HOLLINGS at the Blue Key service fraternity annual banquet.

Blue Key at the University of Georgia in Athens holds an annual banquet to pay tribute to selected distinguished Georgians for outstanding service to the university and education. This year's awards went to the university's longtime and respected Dean of Men William Tate and State Representative Chappelle Matthews, of Clarke County.

The Senator from South Carolina delivered the keynote address at the banquet, and I bring his remarks to the Members of the Senate and 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:

TEXT OF ADDRESS BY SENATOR ERNEST F. HOLLINGS

My temptation today is to give a rip roaring speech, because we in Georgia and South Carolina live hard, we work hard, and we are proud of our progress. But, somehow it strikes me that we have had enough rips and roars in our society today and that what is needed most is a talking of sense to our people. For truly America is fed up—America is in turmoil. Everyone is shouting and no one is listening. And, rather than bring us together, the mood at this moment is—leave us alone. Gone is the old sense of community that united us for the challenges of the past. We don't face problems together anymore. We meet them as special interest groups, as members of impatient minority blocs and organizations. We identify not as Americans, but as hard hats or students or militants or women liberators or as members of the silent majority.

As little groups and cliques we shout our non-negotiable demands, attempting to drown out all differing points of view. We fight for a spot in front of the television camera in the street, on the misguided assumption that emotional outbursts will somehow bring needed change. Our own group is always right. Our own group, if given its way, could usher in the millennium. The radical demands thorough change by sun-up tomorrow. "I have seen the vision," he says. "Follow me to Utopia." The archconservative sits, stubborn as a mule, refusing to concede that any change is desirable. Each group must have things its own way. Each would construct an America in its own straight jacket image. And the creed is—do things my way or get out. "America, love it or leave it"—but always with the stipulation that "I will decide what America means." The hard hat wants no dialogue with the student—he wants the student to shut up. The student seeks no compromise with the hard hat—he hopes for an America without hard hats. The clamour of rhetoric increases decible by decible until the voices of reason are now effectively silenced. Meanwhile, everyone is in flight—fleeing from the city to the suburb, fleeing from the disorder of crime and violence, fleeing from government. And, more important, fleeing from responsibility to one another. A country once excited by the challenge of change is now beset by fear. And so, the challenge tonight is the same as 100 years ago—"shall we meanly lose or nobly save the last best hope on earth."

I say, in all solemnity, there is a disturbing similarity between our America of 1970 and the America of 1860. A hundred years ago we lost patience with one another—we ran out of tolerance. We lost the spirit of compromise. We came apart at the seams. The nation disintegrated and it took the bloodiest war in our nation's history to put this country together again. It seems that everyone would realize that America did not grow to maturity on a one-way street of non-negotiable demands. It progressed instead on a broad avenue of give and take—of reasonable argument and of taking what was best from the many diverse groups who settled in this land. It seems that everyone would remember the day when we depended on each other—when Franklin set the mood of this country with his cry, "We must all hang together, or assuredly we shall all hang separately." It seems that we would realize that a society wherein each group sees itself infallible will choke on its pride—a society in which each insists on doing his own thing is a society wherein nothing gets done. And, it seems that we would remember our 100 years of trying it alone without national government.

South Carolina is presently celebrating its 300th birthday. But the nation is only 200 years old. We are just now refreshing our memory of that hundred years without a representative national government. Just above the name of John Hancock is written the founding spirit of this Republic, "We mutually pledge each other our lives, our fortunes, and our sacred honor." We cannot be

reminded too forcefully that in the Declaration of Independence, there was also a declaration of dependence. "United we stand, divided we fall." That was the challenge of the 1770's. That is the challenge of the 1970's.

No one can visit a college campus and discuss the nation's problems without giving attention to the role of youth today. Many of my friends are annoyed by the attention public officials now accord the students. Twenty years ago, the only attention the student received from a Senator was a commencement talk on graduation day. It was a one-time appearance. We spoke and the students listened. Today, the average campus will be visited by four or five Senators or Congressmen. Some students won't listen to anything. But, the overwhelming majority are listening. They are more concerned about the future of this country and what it stands for than my generation. They approach their vision of what America should be with a religious zeal. They ask questions—they want results.

The student will want to know why people still go hungry in this land of plenty. Why do we want to start another Vietnam in Cambodia? And, why do we in America want to emulate the sayings of Mao that all power is derived from the barrel of a gun? There will be dialogue—there will be questions that you can't answer—and there will be questions that you can't leave unanswered. Students will have an effect. The Senator takes his homework back to Washington and the legislative mill begins to grind.

We can credit the students with consumer protection, automobile safety, meat inspection and the fairness doctrine. The test for each Senator now is—is it fair? The draft law—is it fair? The tax law—is it fair? And, many times while the best brains of industry are telling us it can't be done, the students prove otherwise.

I have just left Washington with America's automotive industry up in arms. Not just because of a strike, but because of a requirement under consideration for the production of an emission free automobile engine. The House bill required a 90 percent emission free standard by 1980 and the Senate is prepared to require this by 1975. Impossible say the Detroit industrialists. Yet, this past Labor Day a group of some 50 students under the sponsorship of MIT drove their self-designed automobiles across the country and two of the winners actually exceeded the standards envisioned for 1980. What the industrial establishment says can't be done, the students have done. So, society learns from its students.

Of course, the students must learn from society. For one thing, once the students decide a matter, they believe it is right for America. Students must learn that they are not a majority. Even if all America's students agreed upon a point, there are nearly 200 million other citizens and 75 million other voters. In fact, they are a minority of the young. The Bureau of the Census reports that there are 10½ million 18, 19 and 20 year olds. Only a quarter of these are students. Fifty percent—or five million—of this age group are breadwinners, workers and hard hats. One million are new mothers. So, when we discuss finding out what the young people want, we go not just to the campus, but to those other vital groups too.

Many times, the students seem to know the cost of everything and the value of nothing. They come into your office and, in expert fashion, describe and psychoanalyze the Viet Cong. They can give you his height and weight, how he lives, and how he thinks, and give you his reaction. But, the student has not the remotest idea of how the hard hat lives, what he thinks, and why he reacts the way he does. Yes, the student knows all there is to know about an Asian peasant 10,000 miles away, but often shows no understanding whatever for the guy next door who, in his way, is working and building this country.

Impatience is the mark of the student. Born and bred on instant food, raised and schooled on instant credit, they expect instant government. The student movement that followed Gene McCarthy was motivated by the hope for peace and new leadership. The students made their mark in over a dozen primaries. But, when they failed in Chicago, they immediately cried fraud and quit. Our generation would have savored the progress made, come back and tried again. But, not today's generation—they fail to appreciate that America and the road to freedom is not the 100 yard dash, but the endurance contest.

We in the establishment must understand that we are responsible for the contest; that we need self-discipline just as much as the students—that we need to listen. And, we must be responsive.

I don't speak politically. I don't speak as a member of one political party, for I realize as DeTocqueville said over 130 years ago, "There are many men of principle in both parties in America, but there is no party of principle." That has not changed. Lyndon Johnson is just as much responsible for today's inflation as is Richard Nixon. Lyndon Johnson stumbled and fumbled on the war just as much as Richard Nixon and, unfortunately, both lead from concensus rather than concern. Both attacked the politics of the problem rather than the problems themselves. If we can outlive the age of demonstrations—if we can outlive government by political polls, we shall be a blessed nation indeed.

On the other hand, how many of you really feel that government is responsive to the needs and desires of the average American? How many really find credible the words and actions of our government? Who knows what the policy is? Who can truthfully say they feel a sense of trust in the nation's leadership? Who feels that the idea of America persists—"All government shall derive its just powers from the consent of the governed"? If I sense the tempo of America today, people feel that government is deriving its just powers from dissent rather than consent. People just don't feel themselves a part of government anymore.

Part of the fault lies with a government too quick to politick. We never have come clean with a position on this war. The policy is retreat, but the rhetoric is attack. You ask why would anyone politick with war. We know that President Nixon would like to end it all in the next hour. But each President has feared the reaction of the home front when it learned we had failed at the battle front. No one has wanted to be in the chicken coop when the chickens come home to roost. Kenneth O'Donnell writes that President Kennedy's decision to get us out of Vietnam was delayed by his not wanting to face the reaction of the people on the heels of withdrawal. President Johnson thought he could politic it. It would be a painless war—there would be no threat of World War III because there would be no threat to annihilate the enemy. We would come with men and machines, bluff and gusto—but we wouldn't let the military really fight. We would minimize casualties so as to minimize complaints from home. No one would stay over a year. We wouldn't call up the National Guard or Reserve. We would have guns and butter both—business as usual. If the people at home didn't suffer—if they didn't feel any real impact of war, then his mandate for a Great Society in 1964 could be repeated in 1968.

At first, it appeared that Mr. Nixon and the Congress would stop trying to outpolitic each other on the war and get in step with a clear policy. Mr. Nixon stated that he no longer sought military victory and announced in June of last year a policy of withdrawal. In the same month the United States Senate approved Senator Fulbright's commitment resolution, stating that hereafter no foreign commitment of the United States would be considered valid unless approved by the Congress as well as the Executive. President Nixon approved this policy. When debate ensued on Laos and Thailand, 81 Senators joined together and approved the first Cooper-Church Amendment prohibiting U.S. ground combat troop activity in Laos and Thailand. Cambodia was not specifically included because of Administration statements that it was a sanctuary and no action was contemplated there. The President stated that he was pleased with the amendment and signed it into law on December 29th.

However, when the Cambodian fiasco occurred and the United States Senate with the second Cooper-Church Amendment tried to get back in step with the President so that we could present a united front to the people of this land, the President chose the political route of his predecessor. At no time did Mr. Nixon object to the substance of this measure. He did not object to the restriction on combat activity. In fact, he said no American troops would be used in Cambodia after July 1st. And he denied any commitment to the Lon Nol government. But, instead of working with Congress, which after six years of bloody warfare was trying desperately to set a policy as to our Far-Eastern commitments, the President filibustered. Cooper-Church advocates were pictured as less than 100 percent Americans. They were accused of undercutting his authority as Commander-in-Chief. They were even said to be encouraging the first military defeat the United States had ever suffered. The President's floor leader stated that the introduction of the amendment was an affront to him as an American. But, later, he voted "aye" and so did 75 percent of the people's representatives in the United States Senate.

Relishing the popularity shown in political polls on this score, Mr. Nixon supplanted his Southern strategy with a "Support the Commander-in-Chief Strategy." It is somehow un-American to criticize the President. The strategy is applied now not just to the South, but to the entire land by sending the Vice President to the attack. And, for an Administration dedicated to "Bring us Together" the Vice President in ranting rhetoric rips us apart.

The office of Vice President over the years has been built to one of responsibility. The Vice President could bring us together as Chairman of the President's Council on Youth Opportunity. But, in his first 16 months in office, Mr. Agnew has not once convened a council meeting. Quite a record for the self-styled expert on youth. And, while I have been trying desperately for an oceans program, Mr. Agnew refused for ten months to meet with the Marine Science Council—yet he is its chairman. In February, the President created a new Office of Intergovernmental Relations. The Vice President is its head, charged with improving federal relations with state and local governments. But, when the governors met in Missouri this summer, the Vice President was absent. Last Spring, the President named Mr. Agnew to chair a cabinet committee on school desegregation. But, the Vice President missed its last seven meetings in the critical weeks before the schools opened this Fall. The Vice President is Chairman of the National Aeronautics and Space Council; the President's Council on Indian Opportunity; and the President's Council on Physical Fitness. But, he has ignored all three. Most importantly, he has ignored his primary constitutional duty—President of the United States Senate. As campaigner-in-chief for the "Support the Commander-

in-Chief Strategy," he has been absent 98 percent of the time roaming the land, tearing down the Senate as an institution.

The "Support the Commander-in-Chief" or else "you are un-American" jag is supposed to carry until November 3. Come 1971, dramatic Vietnamization will occur. The news of large numbers of returning troops will be laid on for the 1972 election. For whatever reason, we will welcome it.

But when the day arrives when it will no longer be unpatriotic to ask the question why, the exacerbation of disappointment and disillusionment fostered by Mr. Agnew will certainly make a chaotic country for our boys to come home to.

Leadership by political bamboozle is equally rampant when it comes to the issues of domestic life. We have heard much about the hunger issue in the past couple of years. The President held a top-level White House Conference on Hunger and told it, "that hunger and malnutrition should persist in a land such as ours is embarrassing and intolerable." Yet, he has given no leadership on the problem of eradicating hunger.

On another front, the school board member sacrifices good name and good will in his community when he agrees to implement controversial guidelines to bring progress on the racial front. What happens? He is quickly cut down by another department of government. The assistant secretary of commerce who tells it like it is, is promptly fired. The leader dedicated to a program is turned away by being told that his first allegiance must be politics. And, the Cabinet member who opens his eyes is swiftly blindfolded with a White House rebuff. And just last week a top Justice Department official warned federal employees that those who publicly differ with the Nixon Administration can expect to possibly lose their jobs.

What confidence can there be in an Administration whose announced creed is "judge us by what we do, not by what we say?" Why must there be any difference between what government says and what it does? We have been practicing the art of self-government for nearly 200 years. I believe we are mature enough to face the truth. We won't be practicing self-government very much longer if that government tells us to ignore what it says. That is not the way Andrew Jackson or Woodrow Wilson or Harry Truman ran the Presidency. Perhaps they made mistakes, but at least the people knew where their government stood. The great Presidents used rhetoric to implement action, not to obscure it. Courthouse politics is not good enough for the courthouse, leave alone the White House. By no means can we afford courthouse politics at the highest level. We can't say "no more Vietnams" and then start another one in Cambodia under the guise of self-defense. We cannot have a Nixon plan for the East and a Marshall plan for the West. We can't go to New Orleans saying we don't like Northerners pointing their fingers at the South and then when we try to get equal treatment for the South with the Stennis Amendment have the President order his congressional lieutenants to kill the amendment. We can't, in the name of eliminating the separate but equal doctrine, establish a separate but unequal policy by calling segregation in the South de jure and the same segregation in the North de facto. We can't jawbone against inflation by publicly vetoing education and hospital bills while refusing to jawbone the labor and business leaders to stop the spiral of wages and prices. We cannot signal the creed of this Administration as "Bring us Together" and then legislate us apart with a take over of the electoral college and by direct elections, write into the law status for every divisive group in America.

I cannot honestly tell you what the President's intention was when he invaded Cambodia. If I told you that I knew what the President's plan to end the war is, what his terms are, I would be less than candid. I don't know what the President really thinks about civil rights, and neither does anybody I talk to in Washington. I don't know where he stands on stopping inflation, eradicating poverty, on school busing, on textile imports, or on anything else.

We must quit playing politics and lead. The country stands in need of a clarion call, a summons to greatness. It was Paul in his first epistle to the Corinthians who said, "If the trumpet give an uncertain sound, who shall prepare himself for battle." We are not preparing and the reason is the uncertain trumpet of our national leadership. The road ahead is by no means clear. Shall we continue down this clamorous road of drift and division, insuring the collapse of all that has been built by patient toil and sweat? Or, can we get back on the road of a forgotten America?

The first thing we must do is go to work. We have given up on politics too soon. John Gardner recently said, "Out of thousands of years of experience in domesticating the savagery of human conflicts, man has distilled law and government and politics. As citizens we honor law—or we have until recently. We neglect government and we scorn politics. No wonder we are in trouble." Gardner went on to say, "It is precisely in the political forum that free citizens can have their say, trade out their differences and identify their shared goals. Where else, how else can a free people orchestrate their conflicting purposes?"

There is no other way. Only through rational government and politics can we find the road to meaningful change. The hard hat will not find a pot of gold at the end of the rainbow simply by ridding America of the student. Nor will the young find a brave new world simply by insistence on everyone doing his own thing.

Like 100 years ago, the politics of hope have given way to the politics of despair. Too many of us are seeking change outside the political realm, outside all the institutions which can make productive change possible. Our problems cannot be solved in the streets. A just society cannot be built on the ashes of burned buildings or the beaten bodies of those with whom we disagree. A just society cannot be built when so many of us sit home in front of the TV, cheering for our side as our adversaries receive their comeuppance.

No problem confronts this country that cannot be solved within the system. We must all do our part. The citizen must rededicate himself to the spirit of tolerance and compromise that makes meaningful change possible. This demands self-discipline. A just society must be an orderly society. We must discipline to fulfill our responsibilities as citizens. The blessing of civilization is to have open exchange and open expression and a pursuing of one's talent to its ultimate development. This open-ended pursual and free expression can only be done within an ordered system. From the Supreme Court on down to the average citizen, we must act on the belief that while the First Amendment says you can think as you please and speak as you please, you cannot do as you please. The law of the jungle cannot co-exist with the rule of law.

This movement must be led. We in the Congress, those in city hall and statehouse, all in government must realize that our function is to make headway and not headlines. Government must be responsive. The Congress cannot legislate truth-in-lending and practice secrecy in voting. Most importantly, the President must summon the American people to renewed greatness. We stand in need of Presidential leadership that will move decisively to tackle the many issues which currently plague us. Action must supplant rhetoric, and government must come clean with the people. In an era of grave dissension, we can ill afford leadership that feeds on the disunity of the nation.

Finally, a just society must have compassion. It was a wise doctor who prayed that he would never lose the sense of pain felt by his patients. One cannot heal wounds that he cannot feel. The Negro is edgy that his newly-won gains of the past decade might be lost. His fear is deeply felt. All the while he is being pressured by the black militant. Unless we feel this sense of pain and fear, the militant will gain influence in the black community. The housewife is disillusioned at the grocery bill, and there must be compassion for her when we contemplate costly new welfare programs. The mother wonders when drugs will hit her child. The workingman wonders how long he can hold his job. The head of the House worries for the safety of his family as the crime statistics soar ever higher. In the meantime, our sons continue to die without knowing the reason why. Unless we realize that every man has hopes and dreams, grievances and fears, we will lack the spirit of community necessary to a united fight against our many problems. We need not only confidence in government, but confidence in each other. Wise leadership can encourage that dedication, but first we must find it in our will to make a national declaration of dependence.

Whatever decision we make, there is a new America around the corner. What kind of America will it be? It is up to you and me to decide.

NASA CONTRADICTS ITSELF ON SPACE PROGRAM COSTS

Mr. PROXMIRE. Mr. President, some time ago the National Aeronautics and Space Administration announced that it had decided to cancel the flights of Apollo 15 and Apollo 19, for budgetary reasons. It was obvious that canceling these flights would not only bring about savings from future appropriations, but would also free up some of the hardware formerly earmarked for these flights for other missions.

To get a more specific understanding of the savings that will be achieved, the Senator from Minnesota (Mr. MONDALE) and I wrote to the NASA Administrator and asked the following questions:

What additional funds will be made available to NASA as a result of these cancellations?

Do you anticipate that any of these funds will be applied to the space shuttle/station project? If so, how much additional money will be made available and how will it be used?

Will any of these funds be applied to the Skylab project? If so, how much additional money will be made available and how will it be used? Will there be an earlier launch date for Skylab?

To what other projects will these funds be applied?

In addition to releasing funds by canceling these moon flights, what hardware will be freed for use in other programs? How will this hardware be used? What is the cash value of this hardware?

The answer from Acting NASA Administrator George M. Low arrived Tuesday. It indicates that very substantial savings will be achieved. In fiscal year 1971, the savings will amount to $50.1 million. And NASA says the cancellations will "result in much greater reductions in Apollo funding requirements in fiscal year 1972 and subsequent years."

In addition, NASA's letter points out that hardware from Apollo 15 and Apollo 19 will be saved for use on other missions. This hardware includes two Saturn V launch vehicles, which cost NASA $185 million each; one command and service module, costing $55 million; and one lunar module, costing $40 million. These four items add up to a total saving of $465 million. And these are just the major pieces of hardware—there are undoubtedly many smaller items which would boost the total still higher.

Mr. President, I am delighted to know that such substantial savings can and will be achieved. But I wish NASA would get its story straight. Last year, I wrote to NASA and suggested possible cutbacks in the Apollo program—from three flights a year to two, or from three flights a year to one—and asked how much could be saved with such cutbacks. NASA told me that cutting back Apollo from three flights a year to two—a cutback of one-third—would save only $30 million a year. Cutting back from three flights a year to one—a cutback of two-thirds—would save only $45 million a year.

These are pitifully small by comparison to the total fiscal year 1970 Apollo budget of $1.691 billion. I found it difficult to reconcile savings of only 1.8 percent or 2.7 percent in the budget with the proposed program cutbacks of 33 percent or 66 percent.

NASA's letter to Senator MONDALE and me has cleared this up. Congress now has the facts with which it can appraise the enormous cost that the space program entails, and the very substantial savings that can be achieved when relatively modest cutbacks are imposed. I hope Congress will take this into account when the NASA budget for this fiscal year comes before it again later this year.

Mr. President, I ask unanimous consent that the NASA letter to me dated September 12, 1969, and the NASA letter to Senator MONDALE and me dated September 18, 1970, be printed in the RECORD.

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

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., September 28, 1970.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: This is in response to your letter of September 10, also signed by Senator Mondale, on NASA's decision to cancel two of the remaining Apollo lunar missions. I am sending a similar letter to Senator Mondale.

This decision was one of the actions taken by NASA in establishing an interim operating budget for FY 1971 at the level of the appropriations for NASA included in H.R. 17548, the Independent Offices and HUD Appropriations Bill which was vetoed by the President. In total, the appropriations for NASA approved by Congress in this bill amounted to $3,268.7 million, a reduction of $64.3 million from the FY 1971 budget request of $3,333 million.

In view of the already austere level of the budget request for FY 1971, the $64.3 million reduction forced NASA to face some very difficult decisions. After considering all the alternatives we concluded that the best course in the long-term interest of the space program was to cancel two Apollo flights—formerly designated Apollos 15 and 19—and reschedule the remaining flights to complete the Apollo program prior to the launch of Skylab in 1972.

These decisions permitted a reduction of $50.1 million in our FY 1971 budget ($42.1 million in the Apollo project and $8 million in Tracking and Data Acquisition activities). Also, *the decisions result in much greater reductions in Apollo funding requirements in FY 1972 and subsequent years* which will help us to move ahead affirmatively with the top priority space programs for the 1970's without an undue peaking of the total NASA budget during this period.

We came to the decision to cancel the two Apollo missions reluctantly because it curtails by two the number of scientifically important regions of the moon that we will be able to explore in the Apollo program. Faced with a hard choice, however, we concluded that a higher priority must be given to activities which over a period of years will give the nation new capabilities and accomplishments in space and, in particular, to programs which will also bring about a substantial reduction in the cost of space flight, both manned and unmanned.

For these reasons we have elected to accommodate the reduction in our FY 1971 budget primarily through the cancellation of two Apollo missions rather than by disrupting or cancelling other major on-going programs pointed at new capabilities and accomplishments, such as Skylab and the Viking unmanned landing missions to Mars. We also decided that it is especially important to maintain the full amount budgeted in FY 1971 for studies and preliminary design work on the space shuttle and space station projects. In the years to come, these projects will bring about a major and dramatic reduction in the cost of space operations and, at the same time, give us important and exciting new capabilities in space.

The role of the space shuttle is especially important. It is to be a fully reusable system like an airplane which can fly to and from earth orbit. In addition to serving as a transport for men, supplies, and scientific equipment to and from space stations of the future, it will by itself be a versatile vehicle for performing manned and man-tended experiments in earth orbit and for placing scientific, weather, earth resources, and other *unmanned* satellites in earth orbit and bringing them back to earth for repair and reuse. A major feature is that the space shuttle system, when developed, will have for both manned and unmanned missions a recurring operating cost per mission substantially lower than the current cost of most of our unmanned systems. This reduction will result from two factors: (1) significant reductions in the cost of scientific and applications payloads because of the relaxation of size and weight constraints and the capability for recovery, repair, and reuse of payloads, and (2) reduction in launch costs because the space shuttle vehicles will be reusable.

With this background for the basis of our decision to cancel the two Apollo missions, let me turn to your specific questions:

"What additional funds will be made available to NASA as a result of these cancellations?"

No additional funds will become available to NASA in FY 1971 as a result of the cancellation of two Apollo missions. The FY 1971 savings of $50.1 million associated with the cancellation of these missions enables NASA to accommodate a portion of the $64.3 million reduction in the NASA budget request made by Congress in H.R. 17548. The savings in the Apollo program in FY 1972 and subsequent years will serve to reduce NASA's budget requirements in those years below what would otherwise be the case. The amounts to be provided in FY 1972 and subsequent years will be considered and presented each year in the annual budget process and are subject to Congressional review and approval in the annual authorization and appropriation bills.

"Do you anticipate that any of these funds will be applied to the space shuttle/station project? If so, how much additional money will be made available and how will it be used?"

"Will any of these funds be applied to the Skylab project? If so, how much additional money will be made available and how will it be used? Will there be an earlier launch date for Skylab?"

"To what other projects will these funds be applied?"

As stated above, no additional funds will become available to NASA in FY 1971 as a result of the cancellation of the two Apollo missions. Under our interim operating budget, the funding for space station/shuttle in FY 1971 will be at the level of the budget request ($110 million). The planned FY 1971 funding for Skylab under our interim operating budget is also at the same level as our budget request ($405.2 million). The Skylab launch schedule has not been changed. For FY 1972 and subsequent years the amounts to be applied to these and other major NASA projects will, as previously stated, be determined each year in the annual budget, authorization, and appropriation process.

"In addition to releasing funds by cancelling these moon flights, what hardware will be freed for use in other programs? How will this hardware be used? What is the cash value of this hardware?"

The deletion of the two Apollo missions has freed for other uses two Saturn V launch vehicles. These vehicles will be "mothballed" and stored for future use. No specific manned or unmanned missions have been selected at this time. However this will be the only heavy lift capability remaining in the United States since future production of these vehicles has been suspended. The average production cost of the Saturn V launch vehicles we have produced is approximately $185 million each. The cancellation also leaves us with one completed Command and Service Module (CSM) and one completed Lunar Module (LM). These spacecraft will also be placed in storage and be available for future use if required. The average cost of the CSM's we have produced is $55 million each and of the LM's $40 million each.

I would be pleased to discuss personally with you, if you wish, these and any other matters related to NASA and its programs.

Sincerely yours,

GEORGE M. LOW,
Acting Administrator.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., September 12, 1969.

Hon. WILLIAM E. PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: This responds to your letter of September 8 regarding the NASA authorization bill for FY 1970 which, as reported by the Senate Committee on Aeronautical and Space Sciences, would authorize appropriations of $1.691 billion for the Apollo program, the amount recommended by President Nixon. As you are aware, this is $40 million over the amount recommended in the initial budget request by President Johnson which was subsequently amended to provide for the development and production of augmented systems and new mobility devices to significantly increase the scientific return from future manned lunar flights.

The answers to the specific questions you raise concerning the make-up of the $1.691 billion for Apollo, as well as the sensitivity of this funding level to alternative assumptions on the rate of manned lunar flights are set forth below. Based on an examination of these data and our experience to date, it is abundantly clear to me that given a com-

mitment to sustain manned space flight capability, the rate at which flights take place is not of major economic significance in the short term. On the other hand, the flight rate is of paramount importance in considering the rate of scientific, technological and other returns on our national investment, as well as economical utilization of plant capacity, operational efficiency and, consequently, overall mission success and crew safety.

After eight years of intense effort we have reached the point, with Apollo 11, of proven capability to conduct manned flight operations out as far as the lunar surface. Development of this capability has had many secondary benefits including the enhancement of technological competence of American industry and universities. Now that it is developed, greater emphasis can, and will, be placed in succeeding Apollo flights on the scientific return from lunar flights, and on the direct application of the benefits from space operations in our other programs—manned and unmanned. The scientific return and impact on opinion around the world of Apollo 11 exceeded almost every expectation, and the following flights to sites of greater scientific interest, with longer staytime, more complex and productive scientific equipment, and greater surface mobility will far exceed Apollo 11 in terms of scientifically useful returns.

I would like to discuss several points, which I believe are not generally understood, as background for our answers to your questions.

1. From its inception, the Apollo program has focused on developing a basic national capability to conduct manned operations in space and to demonstrate this capability through a safe manned lunar landing and return in this decade. In the early planning for this program we projected a requirement for fifteen Saturn V launch vehicles and twelve Saturn IB launch vehicles with associated spacecraft to assure successful accomplishment of this goal. These were reasonable assumptions with the total undertaking of the design, development, production, test, launch and operations in space of manned space vehicles still before us. No one predicted, or certainly could have planned on, the unparalleled successes achieved in the Apollo program. With early success, only six Saturn V's and five Saturn IB's with associated spacecraft were required to demonstrate our manned lunar landing capability. Thus, through a significant investment in launch vehicles and spacecraft made over the years when NASA's expenditures approached $6 billion, we have available an inventory of space vehicles larger than we could have reasonably anticipated which can now be applied to the scientific exploration of the moon and to operational missions in earth orbit.

As of now all major hardware has been completed or is under contract and in the production process. The twelve initial Saturn IB's have been completed. Of the authorized fifteen Saturn V's, nine have been completely fabricated, assembled and accepted by NASA; two vehicles are now being tested prior to acceptance; and the remaining four vehicles are in various stages of final assembly. Over half of the initially ordered CSM and LM spacecraft have been assembled and delivered; two more of each will be delivered in this fiscal year; and the remaining spacecraft are in various stages of production.

In recent years NASA's annual expenditures have rapidly declined—by over $2 billion—to the projected rate of $3.9 billion in FY 1970. We are in effect flying out an inventory of space vehicles authorized, ordered, and largely funded in earlier years. The manpower directly involved in NASA work has decreased from a peak of 420,000 toward an estimated 185,000 by next June. With these significant reductions, which came about in part by the completion of heavy design and development effort required in the earlier years, but mostly as a result of extreme national fiscal pressures, we have been forced to face the basic issue posed by each of your questions: namely, at what rate this Nation is willing to continue manned space flight programs or indeed, whether manned lunar missions are to be continued at all. In 1966, NASA's future planning—based on the efficient and economic utilization of the capabilities then well along in development—envisioned the production and launch of six Saturn V's and six Saturn IB's with associated spacecraft per year to carry out launch and earth orbital programs. From those early recommendations, we have been forced to a production rate of four of each per year, then two, and finally in 1968 to the point where we were forced to take steps to suspend production of Saturn V's and to halt production of Saturn IB's.

2. President Johnson's FY 1970 budget for NASA was based on a "holding plan" designed to arrest the drastic three year decline in U.S. aeronautics and space research and development and to defer major decisions to the new Administration. President Nixon in his budget amendments, reduced the overall estimates for NASA by $131 million, but then added $86 million to implement two important decisions: to preserve the production capability of the Saturn V launch vehicle, the largest space booster in the world, and to initiate the development and production of augmented systems and new mobility devices to provide a significant increase in the scientific return from a lunar exploration program utilizing the remaining authorized Saturn/Apollo hardware. The decision to provide additional lunar exploration funds was coupled with the decision to reduce the Apollo mission rate from five a year to three a year once the initial lunar landing and return was accomplished. It is significant that these decisions were reviewed and unanimously endorsed by the Space Task Group established by the President to study the future goals and objectives of this Nation in space.

3. The success of Apollo 11, in the first month of FY 1970, has allowed us to proceed on the assumptions underlying the amendments to the original FY 1970 budget including such actions as the reduction in workforce by over 5,000 at the Kennedy Space Center, phase-out of four Apollo tracking ships and other actions tied to reducing the planned flight rate in Apollo from five to three per year. These actions are estimated to result in a savings of about $39 million in the Apollo program this fiscal year as reflected in the amendments to the budget.

4. The final, and most important point I must make is that there is a minimum flight rate below which I, and the Apollo mission directors, believe we could not undertake manned flights with sufficient confidence or economy to justify proceeding with a manned space flight program. Such a judgment is, of course, necessarily qualitative. For example, in reducing our flight rate from five to three, we have reduced the size of the workforce at Kennedy Space Center to essentially a one-crew operation. Therefore, at a rate of one flight a year, much of the workforce at the Kennedy Space Center, at the Marshall Space Flight Center in Alabama, and at the Manned Spacecraft Center in Houston would not be fully employed for most of each year. The same would be true in the many contractor plants and at test sites which are required in support of launch and flight mission operations. I would seriously question our ability to sustain the necessary quality, reliability, and safety requirements with such an under-utilized workforce. Many view three manned flights per year as the minimum that NASA should undertake. In my view, it cannot be less than somewhere between two and three. The optimum rate from a standpoint of safety and especially efficiency is considerably higher.

The preceding discussion should not be taken as advocating space flight solely for its own sake. The benefits we are deriving and which we will continue to accrue from the space program in fields such as communications, meteorology, earth resources, advancing science and technology, education and human fulfillment clearly justify continuation of the balanced program of space exploration and application at a reasonable rate. To do this will require authorization and appropriation of the full amount recommended for NASA for FY 1970 by the President and by the Senate Committee on Aeronautical and Space Sciences.

In answer to your specific questions we estimate that approximately $30 million could be saved in FY 1970 by reducing the launch rate from three per year to a rate of two per year and $45 million by reducing to one per year. These savings represent mission unique cost such as recovery, trajectory analysis, pad refurbishment, systems engineering, expendable supplies, propellants, overtime, and multi-shift staffing at the Mission Control Center. As set forth in the attachments, the relatively small impact on the 1970 fund requirement caused by launch rate adjustments results from the fact that we are so far along in the production of the launch vehicles and spacecraft which are already authorized that little can be done to alter the production process without incurring significant cost penalties. If we were to terminate lunar missions at the completion of the currently authorized program, the amounts required would be substantially the same as the amount requested in the 1970 budget. We would be able to reduce this amount by $11 million which is included to conduct studies of future lunar missions beyond those currently authorized. However, if an immediate decision were made to terminate all manned space flight activity including the termination of current hardware contracts and the close-down of all manned space flight centers, significantly greater savings could be achieved. The amount of savings would depend, generaly, on how rapidly such a decision could be implemented and the extent of the Government's liability to the contractors.

Details supporting these estimates and conclusions are attached. Please let me know if we can be of further assistance on this matter.

Sincerely yours,

T. O. PAINE,
Administrator.

NGUYEN CAO KY NOT TO ATTEND "VICTORY RALLY"

Mr. DOLE. Mr. President, I am pleased the Vice President of South Vietnam, Nguyen Cao Ky, has wisely decided not to attend the October "victory rally" sponsored by radio evangelist Rev. Carl McIntire. The appearance of Vice President Ky at this rally could have brought nothing but harm to President Nixon's successful Vietnam policy which consists of Vietnamization, U.S. troop withdrawals and the Paris peace talks.

I ask unanimous consent to have printed in the RECORD William S. White's column entitled "U.S. Should Prevent Gen. Ky's Attendance at McIntire's Rally."

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

[From the Philadelphia Inquirer, Sept. 17, 1970]

UNITED STATES SHOULD PREVENT GEN. KY'S ATTENDANCE AT MCINTIRE'S RALLY

WASHINGTON.—It is of the most urgent importance that the United States Government

do whatever may be necessary to prevent the political puppeteer, the Rev. Carl McIntire, from bringing Vice President Nguyen Cao Ky of South Vietnam into this country for a so-called "victory rally" in October.

Everything possible is wrong with this mischievous business. Nothing whatever can be said to be either right or proper about it. Mr. McIntire, who is commonly called "a radio preacher," had no business whatever to issue this invitation in the first place, for he has been elected by nobody to anything. Vice President Ky had even less business to accept it, as it appears he has done—and it is profoundly to be hoped that he will yet be dissuaded from this meddlesome and disastrous affair.

The language used by Mr. McIntire—that Ky's speech at the rally would "out-Agnew" is both an insult to the Vice President of the United States and the biggest break ever yet given to the extreme doves of this nation.

For it hands to them the opportunity to associate the responsible hawks of the United States with an extremist and exhibitionist parson and a South Vietnamese politician who, whatever his good qualities, clearly himself tends toward exhibitionism.

The fact that the "peace" extremists have again and again "demonstrated" and "protested"—and that their spokesmen in the Senate have again and again unwittingly encouraged the North Vietnamese enemy simply to hang on until we quit—has nothing to do with the case, in adult reason.

The pride and the strength of the responsible pro-war movement in the United States is precisely that it has steadfastly refused to adopt either the language or the methods of extremism, no matter what others may have chosen to do. The McIntire-Ky sorties—unless the administration puts a stop to this thing before it starts—will inevitably to some extent stain a record of which no reasonable hawk need ever to have been ashamed.

To be sure, there have been Americans who have gone to Hanoi to traffic intellectually, and in moral effect to negotiate, with the heads of an enemy power which is killing American troops. But let them do it and do it again and again if they wish. This is their onus and the time may come when their memories will be bitter ones.

The responsible hawk, for his part, has no need—and far too much taste—to go over the heads of the elected Government of the United States to bring foreign hell-fire evangels in here to support a cause that requires no such crude and intrusive defense.

Mr. McIntire, moreover, is very wrong on quite another count. Not only is he, too, in effect negotiating, as a private person with a foreign power, he is also meddling in our coming Congressional and senatorial elections. His prediction that the team of Ky and McIntire will make it "open season for doves" in the elections is both offensive and self-defeating.

If anything could save the Senate doves who ought to be beaten it would be the spectacle of this "radio preacher" and a foreign official presuming to instruct and to marshal the people of the United States in a so-called victory rally.

Napoleon once in substance asked the Lord to save him from allies and the White House of today is undoubtedly tempted to put up the same petition to the Almighty. Vice President Ky is a good soldier and—for South Vietnam—also no doubt a useful leader.

But the first duty of a good soldier is to do nothing, however indirectly, to serve the enemy's cause. And the first duty of this particular national leader is not to make difficulties for the leaders of the nation that has done so much to help save his own.

Ky ought to give the most ceremonious of Oriental farewells—forever to Mr. McIntire and Mr. McIntire ought to be content with his activities in the pulpit.

MANY RELIGIOUS GROUPS FAVOR RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, various organizations have urged the U.S. Senate to ratify the Genocide Convention of the U.N. Action by religious organizations in the field of human rights should not be unexpected, as most of these organizations are deeply concerned when any portion of the world population is denied the natural human right to life.

Religious organizations such as the National Council of Churches, the United Methodist Church, the American Baptist Convention, the Unitarian Universalist Association, the American Jewish Congress, and B'nai B'rith presented statements to the subcommittee on the Genocide Convention of the Senate Foreign Relations Committee urging U.S. ratification. In 1964 the Episcopal Church, meeting in its National General Convention in St. Louis, Mo., went on record in favor of ratification of the Genocide Convention and other human rights documents by the U.S. Senate.

It is time that the U.S. Senate fulfill its obligation to the people of the world. We should heed the religious organizations who have urged ratification of the human rights conventions of the U.N.

Mr. President, in this regard I ask unanimous consent that the resolution adopted by the general convention of the Protestant Episcopal Church in 1964 be printed in the RECORD.

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

UNITED NATIONS HUMAN RIGHTS CONVENTION

Whereas, The United States as a nation, and many church bodies within it, have firmly supported efforts to expand full human rights; and

Whereas, The various international conventions on specific human rights, namely those on genocide, slavery, forced labor and the political rights of women, have been approved by scores of civilized nations, but not the United States; and

Whereas, The failure of the United States Senate to ratify any of these conventions is both an embarrassment to our nation in world affairs and a deterrent to the development of human rights in newly-emerging nations of the world; therefore be it

Resolved, That this Triennial Meeting strongly urge the United States Senate to ratify all of these conventions; and be it further

Resolved, That copies of this resolution be sent to each Senator and to the appropriate section of the State Department.

VOLUNTARY BLOOD DONOR PROGRAM

Mr. EAGLETON. Mr. President, the Senate recently approved a joint resolution declaring January as "National Blood Donor Month," for the second year. As the chief sponsor of the joint resolution, I hope that the House will agree to the measure before the end of this session.

The voluntary blood donor program is of vital importance to health care in this country. Recently, two worthwhile articles on the blood donor program were brought to my attention by the American Association of Blood Banks.

I ask unanimous consent that the articles written by Bernice M. Hemphill and Dr. Enold H. Dahlquist, Jr., be printed in the RECORD.

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

AABB NATIONAL CLEARINGHOUSE BLOOD PROGRAM

(By Bernice M. Hemphill)

In Montreal, Canada, a 41 year old father of three with a super-rare blood type—Group A Vel Negative—occurring in one person in 90,000, was scheduled for vascular surgery, following an accident. Not a single compatible blood donor was found in Canada.

Through the Canadian Red Cross, the hospital appealed for help from the American Association of Blood Banks' Central File for Rare Donors. This round-the-clock, no-fee service, located in Chicago, includes the names of some 4,500 persons with rare blood. Donors with the Group A Vel Negative blood needed by the patient were located in San Mateo, Calif., Portland, Ore., Charlotte, N.C., and Casper, Wyo. Each donor gave a unit of blood at a nearby blood bank, and the blood, packed in refrigerated boxes, was flown to Montreal, where it was instrumental in saving the patient's life.

In Austin, Texas, a 26-year-old hemophiliac (bleeder), now studying for his Doctorate in Biochemistry at the University of Texas, has used hundreds of units of plasma for transfusion therapy during the past few years. To offset the cost of these transfusions—representing thousands of dollars in replacement fees for the blood used—the patient's father, who lives in Washington, D.C., has obtained blood donations from scores of co-workers in the United States Weather Bureau. The blood was donated in the Nation's Capital and the credits transferred to the patient's medical account in Austin.

In San Francisco, a 35-year-old physician, received two transplanted kidneys during 1969, both of which were subsequently rejected by his body. The patient, who received over 40 units of blood during the surgery, is currently dependent on a kidney machine while waiting for his third transplant. He continues to receive transfusions of packed red blood cells to fight anemia. One of his colleagues, learning of his plight, appealed to the local medical society, and another physician wrote to the patient's former classmates pointing out the need for blood replacements. The response was spontaneous and blood donations made by physicians throughout the country were credited to the patient's account.

(The author conceived the original idea for a blood bank clearinghouse for the exchange of blood and donor replacement credits and coordinated the first clearinghouse program, sponsored by the California Blood Bank System in 1951. She has served as chairman of the American Association of Blood Banks National Committee on Clearinghouse since its inception and directs the program on a volunteer basis.)

These three patients are among thousands who have benefited from the exchange of blood or blood replacement credits through the American Association of Blood Banks' National Clearinghouse Program . . . a service which has been called "one of the Nation's most valuable banking systems."

Day after day, this "nationwide pipeline" helps communities to supply lifesaving blood of the right types and in the right amounts to patients needing transfusions.

The program makes it possible for a per-

son in one part of the country to donate blood for another person receiving transfusions, regardless of residence. It enables a traveler, needing blood almost anywhere in the United States to draw on blood credits "banked at home in advance of need" by himself or by associates who share the benefits of an employees' or fraternal blood donor club plan.

Most significantly, it permits blood banks with *surpluses* to lend to those with *shortages* as a means of preventing outdating of whole blood, which has a refrigerator life of only 21 days.

To conserve blood supplies—a vital national resource—it is the responsibility of blood banks to "care and share" . . . to keep close watch on each day's inventory of the various blood groups and Rh types, to borrow blood when needed through the clearinghouse, and to lend blood when called upon to help other blood banks in short supply.

Nearly 6,500,000 units of blood are transfused in the United States each year and the demand for blood is growing along with its increasing use in surgery and therapy. In spite of the soaring need, only three per cent of those persons eligible to donate blood actually do so. For these reasons, the original purposes of the National Clearinghouse Program—to encourage voluntary blood replacements, to keep transfusion costs at a minimum, and to utilize available blood supplies as effectively as possible—are more meaningful than ever.

At present, more than 800 blood banks and drawing centers share the benefits of reciprocity under the National Clearinghouse Program which serves more than 3,000 hospitals and transfusion services. During 1969, more than 700,000 blood and blood credit exchanges were handled through the national program.

No formal system of reciprocity existed among blood banks prior to 1951. However, when shortages occurred in those days, blood was often rushed refrigerated from one blood bank to another—a complicated procedure which required numerous phone calls and the need for blood banks to maintain separate accounts with one another.

The idea for solving this problem was based on our monetary clearinghouse system. Since it was possible for a person to write a check on a bank in one area and withdraw the money in another, why couldn't "paper credits" representing units of blood be exchanged in the same way? From this germ of an idea evolved the clearinghouse system for blood banks, which has been patterned from its inception on the national fiscal clearinghouse system.

Originally, nine community blood banks joined forces in 1951 to form the California Blood Bank System, and set up a central bookkeeping agency—the original clearinghouse office in San Francisco—through which all transactions among the participating blood banks were channeled.

Each participating blood bank had a single account with the clearinghouse, rather than maintaining many separate accounts with other blood banks. The clearinghouse had no direct responsibility for recruiting donors, procuring or processing blood. It functioned primarily as a "locator" of blood, and as a bookkeeping agency for the blood banks.

A donor in one community wishing to give blood for a patient in another would donate a pint of blood at his local blood bank. A paper credit (I.O.U.) would then be transferred through the clearinghouse to the blood bank supplying blood for transfusion. The blood bank, in turn, would credit the blood replacement to the patient's account, thereby cancelling the replacement fee which the blood bank charges when donor replacement cannot be obtained for blood used.

The clearinghouse maintained daily records of each bank's exchanges, balanced the accounts at the end of each month, and arranged for any necessary shipment of blood to cancel indebtedness between the blood banks.

These same procedures were adopted when the American Association of Blood Banks, a voluntary organization of community and hospital blood banks, initiated the *National* Clearinghouse Program in 1953.

Five District Clearinghouse Offices were established, each serving participating blood banks in a designated area. Although the original District Clearinghouses were separately incorporated, the AABB took over ownership of all five clearinghouses by 1961, and the National Clearinghouse Office was established in San Francisco to coordinated the overall program.

In 1961 also, the American Association of Blood Banks and the American National Red Cross, which between them supply more than 80 per cent of the blood used in the United States entered into a nationwide agreement for the exchange of blood credits between AABB blood banks and the Red Cross's own network of Regional Blood Centers.

The advantages of the National Clearinghouse Program in emergencies was dramatically illustrated during the Chicago blizzard of 1967 when the program was instrumental in averting a serious local blood shortage.

On the morning of February 1, a record 23 inch snowfall halted transportation preventing blood donors from reaching local blood banks. When it was learned that another seven inches of snow was due before evening, the director of the University of Illinois Blood Bank appealed for assistance from the AABB District Clearinghouse in Chicago.

The appeal was relayed by the Telex communication system which links the clearinghouse offices across the United States.

Within minutes, four community blood banks in California, 2,000 miles away, had agreed to provide most of the needed units. The blood was flown from these communities to Los Angeles International Airport and from Los Angeles to Chicago, where all shipments—181 units in all—arrived by 7 p.m. and were rushed by the Chicago Police Department to Michael Reese Hospital for distribution.

Another example of the effectiveness of the clearinghouse was demonstrated also during the New York transit strike in 1966. Coupled with the added difficulties in making normal blood collections was the depletion of the New York Blood Center's blood inventory due to the long New Year holiday. A call for assistance was sent out, and through the efforts of the district clearinghouses, 572 units of blood were shipped from 24 blood banks in all parts of the country.

The significance of the National Clearinghouse Program also has grown with the advancement of surgical techniques. For example, in 1956, Irwin Memorial Blood Bank of the San San Francisco Medical Society, supplied the blood needed for *ten* open heart operations performed that year. Today, the blood bank provides blood for approximately 16 open heart surgery cases a week, or *over 800 cases* a year, each operation requiring from six to 15 units of fresh blood.

Although the fresh, specially processed type-specific blood needed to prime the heart-lung machines and to provide post-operative transfusions must be obtained locally, a large proportion of the patients come to the San Francisco area for surgery from communities outside the areas served by the blood bank. Many come from distant States.

To encourage blood replacement, a letter is sent by the blood bank to the patient's next-of-kin, informing him of the replacement responsibility and giving the name of the nearest blood procurement facility. By availing themselves of the services of the Clearinghouse Program, resourceful families can help to assure that blood will be available for others needing it, and they may save hundreds—even thousands—of dollars in replacement fees which would otherwise be charged to the patient.

One such instance involved the wife of a former official of the California State Department of Industrial Relations, who needed 58 units of blood to control bleeding after open heart surgery.

Although the couple had lived in California for many years, they had moved to Washington, D.C. The patient has returned, however, for her third heart operation at the West Coast's famed cardiac center, Presbyterian Hospital of Pacific Medical Center in San Francisco.

Without the blood supplied for her locally, the patient could not have survived.

Her husband had numerous contacts with statewide labor and employee and professional organizations. To obtain replacements for the blood received by his wife, he arranged to have announcements published in the publications of these organizations, appeals made at membership meetings, and by word of mouth. The response was heartwarming. Blood donations for the patient were made at seven widely scattered California blood banks, and credits "deposited in advance of need" were generously released by various organizations. As a result, replacement credits were obtained through the Clearinghouse Program for every one of the 58 units of blood the patient had used.

The spirit of "caring and sharing" which is so necessary to the success of the National Clearinghouse Program, was demonstrated recently when eleven Florida blood banks joined in a search for rare blood needed for vascular surgery on a 47-year-old retired manufacturer's representative, in Clearwater.

The search began when the hospital ordered six units of blood from R. E. Hunter Memorial Blood Bank in Clearwater, to be crossmatched and available for the surgery, scheduled the following day. The patient was found to have Group O, Rh negative blood, which occurs in one person out of 15 and in addition, antibody studies demonstrated that he had an Fya (Duffy) antibody, which further limited the number of prospective donors who could be recruited. (Approximately 35 percent of those individuals having O negative blood have the Fya antibody.)

Although the patient's blood was not so rare as to warrant a search by the Rare Donor File in Chicago, it was sufficiently rare that no units could be found locally.

The blood bank's laboratory supervisor, Mrs. Alice B. Miller, phoned the AABB Southeast District Clearinghouse in Jacksonville, which issued an immediate appeal for compatible blood in the Jacksonville area and Orlando. Mease Hospital Blood Bank at Dunedin, near Clearwater, screened all available Group O, Rh negative units and found two compatible ones, which were shipped that morning to Clearwater. The Community Blood Bank and St. Anthony's Hospital Blood Bank in St. Petersburg found three units each of the rare blood and these, too, were promptly shipped. The response from more distant Florida blood banks was equally successful. Blood Banks in Miami, Orlando, Gainesville, West Palm Beach and Tallahassee also shipped units. In all, 19 units of the rare blood were made available.

Commending the teamwork of the technologists in the various blood bank laboratories, Mrs. Miller said, "They took time from their busy routines to do the screening test for the Fya antibody, which required a minimum of 30 to 60 minutes per unit. Also the blood banks cheerfully depleted their own supplies of hard-to-obtain O negative blood to share the rare blood units needed by the Clearwater patient.

According to physicians, the successful surgery could not have been performed without available blood.

Two AABB-sponsored programs which are helping to conserve local blood supplies are the Maryland Blood Exchange and the New Jersey Blood Exchange.

The Maryland Blood Exchange, established in 1963 at the request of pathologists in the Baltimore area, now includes 15 participating hospitals. From a central office, a daily inventory is taken by telephone of all available blood in these hospitals and arrangements are made to transfer blood among them when shortages occur. All transactions are channeled through the Northeast District Clearinghouse in New York. This exchange service is available 24 hours a day, seven days a week, and since its inception has been able to move more than 12,300 units of blood fulfilling 80 percent of all requests received.

The New Jersey Blood Exchange, operating in the same manner, was established in 1965 with seven participating Passaic County hospitals, and is now being coordinated through the North Jersey Community Blood Bank Program in cooperation with the American Association of Blood Banks' Northeast District Clearinghouse Office.

The AABB National Clearinghouse Program has continued its sponsorship of these programs which are demonstrating their value by preventing units of blood from outdating by rotating them, and by saving lives as they share blood in emergencies.

Another special program, made possible by the AABB National Clearinghouse system, is the National Blood Reserve program established in 1967 by the Nobles of the Mystic Shrine. Through this program, Shriners and their families in all parts of the country may donate blood for the Shrine Orthopedic Hospitals and Burns Institutes. A master account of all donations is maintained by the Association's National Clearinghouse Office, and credits or blood are transferred as needed to help orthopedically handicapped or badly burned children. Since the inception of this program, more than 3,000 blood donations have been made for this purpose.

Through the overall National Clearinghouse Program more than 2,000,000 blood replacement credits have been exchanged to date and close to 1,000,000 units of blood have been shipped nationwide to alleviate shortages or in settlement of clearinghouse indebtedness. The program is guided by a volunteer committee of professionals, is self-supporting, and operates with the total paid staff of 12 full-time and three part-time employees.

In addition to the exchange of blood and blood credits, other services in the public interest are carried on through the blood bank network established under the National Clearinghouse system. For instance, by requiring that banks making blood shipments under the clearinghouse system be inspected and accredited by the AABB, the National Clearinghouse Program is helping to raise the standards of blood banks and improve the quality of blood transfusion. By promoting the voluntary donor concept and minimizing the need for blood banks to turn to commercial sources, it is helping to assure a safer, more economical blood supply.

The potential of the AABB National Clearinghouse network for expediting the distribution of blood for national defense or in a national emergency has been formally recognized by the federal government.

A Defense Mobilization Order, adopted in April, 1967, provides that "the blood collection activities of federal agencies shall be administered so as to make maximum efficient use of available sources while assuring minimum impact on provision of normal blood supplies for the civilian community."

The order was a prelude to the signing, in October, 1968, of a standby agreement between the government and the AABB for the procurement of blood in the event of a national emergency, or if a need should arise to recruit civilian donors to provide supplementary blood supplies for Vietnam and other overseas military needs, now the sole responsibility of military donors. A similar agreement was made between the government and the American Red Cross, and a joint statement of cooperation was issued by the AABB and the Red Cross.

Future goals of the AABB National Committee on Clearinghouse Program include working toward greater standardization of replacement fees and transfusion charges, and the development of new methods of recruiting voluntary blood donors so that the nation's blood-lifeline, through the National Clearinghouse Program, may render even-greater lifesaving service.

BLOOD PROGRAMS AND BLOOD DONOR PROCUREMENT—A CHALLENGE FOR INDUSTRIAL NURSES

(By Enold H. Dahlquist, Jr., M.D., Associate Director, Blood Bank, Rhode Island Hospital, Providence, R.I., President of the American Association of Blood Banks)

Industrial nurses have key roles in assuring safe and adequate blood supplies for many communities. If more could be enlisted in this vital activity, essential blood procurement could be made more equitable and efficient and the problems of hospital and community blood banks greatly reduced.

Use of blood and blood components in surgery and therapy has increased steadily in recent years. The 1,276 hospital and community blood banks with institutional membership in the American Association of Blood Banks last year reported 5,548,807 units of blood or blood components transfused. This compares with 5,008,170 units by 1,219 banks in 1968 and 4,935,084 units by 1,192 banks in 1967.

PROCUREMENT OF DONORS

A total of more than 6,500,000 pints of blood a year is estimated to be required this year, and blood requirements are increasing ten percent a year at many hospitals. To assure safety and also to keep medical costs down, it is desirable that as much of this blood as possible come from volunteer donors.

Eighty-five percent does come from this source, through replacement by relatives or friends of blood users, through predeposit plans or blood donor groups, or as a result of special, emergency appeals sometimes necessary in January and during the summer months. The remainder generally comes from commercial blood banks and some paid donor sources, with considerable risk of hepatitis. While progress is being made, there is as yet no 100 percent effective test for detecting the donor carrying the hepatitis virus. Paid donors may misrepresent their medical history; volunteers have no reason to do so.

If all of the more than 100 million Americans qualified by age and health to give blood did so, procurement would be no problem. An individual would then need to donate only about every 16 years, and certainly no oftener than once a decade. Unfortunately, we are faced with the fact that only two to three percent of those qualified to donate in our population actually do so.

A few, notably Christian Scientists and Jehovah's Witnesses, object on religious grounds. These are not numerous. The big Catholic, Protestant and Jewish faiths not only approve of blood donation but urge it as the greatest expression of brotherly love.

Blood is human, living tissue and can be stored and used only for a brief 21 days. This means hospitals and blood banks must constantly be recruiting donors to obtain and replenish their supply. There is as yet no substitute for blood and while freezing keeps it indefinitely this process is still too expensive and is available only at a few large centers.

The great majority of people fail to donate blood because of apathy, fear or inconvenience. These are all factors which can be dealt with by education and by the expansion of donor groups and predeposit plans. Industrial nurses and medical directors, industrial relations managers and union leaders can all help on this front.

GROUP PROGRAMS

At the Rhode Island Hospital, 60 percent of the blood used comes from 45 group programs with industrial companies, communities, churches, schools and colleges, and fraternal organizations. Donations, in groups or singly, are spread throughout the year and, as much as possible, scheduled as needed. Press and radio-TV appeals are reserved for emergencies.

At the Irwin Memorial Blood Bank of the San Francisco Medical Society, such groups supply blood to 59 hospitals in eight California counties. Registered nurses are chairmen of five of these: Norita Colamarino, American Telephone & Telegraph Co.; Elizabeth Hanses, Fairchild Semiconductor Corp.; Florence Lebbert, Hartford Insurance Group; Barbara Hummel, U.S. Plywood-California Operations; and Margaret Halliday, Marin County Employees' Association.

All of these groups celebrated National Blood Donor Month last January by pledging increased donations.

The Jacksonville Community Blood Bank in Florida, which at one time bought part of its blood, has become a 100 percent voluntary operation with the support of groups, especially in the insurance field. A Florida plant of the American Cyanamid Company allows employees to give blood on company time and provides them with transportation to the blood bank. Some steel and automobile companies and their unions also have effective blood programs.

ORGANIZING A PROGRAM

Anyone contemplating organizing a program can obtain the American Association of Blood Banks' "Recommendations for Individual and Family Blood Assurance Plans."* There is naturally some variation in these plans and programs because of varying local organizations, situations and donor response. Usually, a single blood donation covers an individual's blood needs for two years or a family's for one year. Through the Reciprocity Agreement between the American Association of Blood Banks' National Clearinghouse Program and the American National Red Cross Blood Program, blood coverage is generally available, under most plans, anywhere in the country. Percentage plans, in wide use, provide that if the group agrees to have a certain percent (usually 20–25 percent) of its membership donate during the year, unlimited coverage is given even for individuals who are unable to donate blood.

It is important in starting a program for your company that this be done through whatever system exists in your community—whether this be a hospital or community blood bank system or a Red Cross Program, all provide roughly similar programs and coverage.

THE INDUSTRIAL NURSE'S ROLE IN RECRUITMENT OF DONORS

By virtue of her position, her uniform and her training, an industrial nurse can do much to allay the fears of the average person about blood donation. There is little pain and no danger. One man, Alfred Ross, a New York musician, has given more than 16 gallons without incident. Scores have given more than ten gallons. Donors are now accepted routinely until their 66th birthday and, in more and more states, 18-year-olds can donate blood without needing to obtain parental consent.

Company bulletin boards, internal news

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*Available free from American Association of Blood Banks, 30 N. Michigan Avenue, Chicago, Illinois 60602.

sheets or publications, and payroll envelopes offer opportunities for a continual education program on the importance and ease of blood donation. Where new employees are given physical examinations and their medical records are already being kept, an industrial nurse, with the right relationship with her company and its unions, can recruit blood donors easier and quicker than most hospital or community banks.

Many donors who are apathetic to general appeals respond with alacrity when a friend or co-worker needs blood, or even when they know where it is going. The apathy similarly disappears under a well organized plan in a company plant.

REASONS FOR DEMAND FOR BLOOD

There are many reasons for the demand for blood. Its availability has made possible a revolution in surgery, which calls for still more blood. Surgeons now perform, routinely, long and serious operations they dared not undertake in the past for fear of sending the patient into shock. Open heart surgery as usually performed is possible only with ample blood. A nine-year-old Florida girl recently required 69 pints.

Heart and kidney transplants (and more than 1,000 of the latter have been performed) are the latest and most dramatic developments. Realistically, the American Medical Association's long-standing Committee on Blood has changed its name to the Committee on Transfusion and Transplantation.

About 25 percent of all blood transfused now goes to cancer patients. Aggressive and hopeful treatment of leukemia accounts for much of it. Blood platelets and chemotherapy are extending for years the lives of children with acute leukemia who formerly died in a few weeks. Blood is the best, and sometimes the only, treatment for severe anemias and badly hurt accident victims. Automobile fatalities and injuries are still rising. Hemophiliacs now can have a normal life span, but may need blood or blood components all their lives.

A bleeding ulcer patient may require 20 to 30 pints of blood in a few hours. Some babies are now transfused before they are born (i.e., while still in the mother's uterus) in order to save their lives. In some desperate cases, a complete exchange of new blood for old is the only hope of life for adults as well as babies.

THOUSANDS OF DONORS NEEDED

Component therapy, the use of blood fractions instead of whole blood where indicated, is to some extent stretching our blood supply. Some banks are finding computers useful in keeping track of blood and donors, thereby also helping to stretch the available supply. But we still need thousands of healthy volunteers to donate blood, not just in dramatic emergencies but at regular intervals throughout the year to constantly replenish the supply and furnish a fresh supply of this tremendously valuable, yet perishable, bit of life. Industrial nurses can help greatly in locating and enrolling these donors. I hope that you will.

NEED FOR A SOUND FARM BILL

Mr. ALLEN. Mr. President, giving emphasis to the vital need to enact a sound farm bill is an Associated Press article which appeared in the Montgomery, Ala., Advertiser of September 5.

The article makes it painfully evident that the American farmer is caught in a vicious cost-price squeeze and that his plight becomes worse with each passing day.

Mr. President, on September 15, the Senate passed its version of a farm bill which, in my opinion, takes a constructive approach toward restoring purchasing power in agriculture. I am sorely distressed over the adamant opposition of the Nixon administration to H.R. 18546 as passed by the Senate. I would hope that the economic experts down at the White House, the Budget Bureau, and the Department of Agriculture will soon come to realize that a strong and viable agriculture is essential to the continued economic strength and security of our Nation.

Let me point out, Mr. President, that, if we do not enact a farm bill this year, we shall revert to the outmoded 1958 farm program. This would mean that we would be returning to the disastrous era of huge Government investments in loans. It would also mean bulging warehouses again with all the attendant expense to the Commodity Credit Corporation, which ran to more than $7 billion in 1958, more than twice the budget request for the Agriculture Department for the 1971 fiscal year. History tells us that such conditions would not benefit the farmer, the consumer, nor the taxpayer.

I should like to make the observation that President Nixon, perhaps more than anyone else down at the other end of Pennsylvania Avenue, should recognize the necessity of avoiding a return to the unworkable 1958 farm program inasmuch as he was serving as Vice President of the United States during the time when farm units in our Nation were being liquidated by the thousands and the Public Treasury was being depleted by the billions.

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:

FARMERS IN BIG TROUBLE DESPITE FEDERAL FUNDS

WASHINGTON.—The farm program package before Congress is the most topical issue in agriculture at the moment but there are longer-range economic patterns that are even more complex and bothersome.

With few exceptions, no one has seriously advocated the immediate scrapping of government controls and subsidies aimed at keeping U.S. farm production in line with demand.

But almost everyone has urged that something be done about inflation, high interest rates and soaring taxes.

Government economists, while privately noting that federal subsidies to agriculture are here to stay for a long time, also are becoming more alarmed over the possibility that farmers may be squeezed out of business despite billions of dollars paid them for cooperating in the federal programs.

An illustration of how higher costs are eating up the "benefits" of federal farm subsidies was included in an Agriculture Department report last week on recent market developments in farm real estate.

For the year ended last March 1, the report said, the national average value of farm land rose 4 per cent, the smallest annual gain since 1963.

The slowdown has been on for some time, primarily because prospective land buyers—about six out of ten are farmers themselves—have realized that farming is not as profitable as it once was thought to be.

This has occurred despite a gradual increase in direct government farm payments or subsidies. Last year these payments totaled almost $3.8 billion and equaled almost one-fourth of the country's net farm income of $16.2 billion.

Unless Congress comes up with a radically different final version, farm programs for the next three years will not include substantial increases in direct payments. Inflation and the other important cost factors of turning out food and fiber, however, are not under such definite restraints imposed by Congress.

Few periods in U.S. agriculture have been more dramatic than the past 20 years. In 1949, a period just after the post-World War II boom and before the Korean war flurry, there were still 24 million people on farms, more than 16 per cent of the nation's population.

Last year only 10 million were on farms, 5 per cent of the population.

Last year, to net a little more than $16 billion, farmers had to spend $38.5 billion to meet production expenses. Of this outlay, actual production costs amounted to little more than $26 billion. The difference was eaten up by depreciation, taxes and interest payments.

According to the most recent Crop Reporting Board index, taxes that cost farmers $10 in 1957–59 were $22.90 last month, up from $21.30 in August 1969.

Interest paid on borrowed capital last month averaged $33.70 for every $10 spent on the same size loan 10 years earlier. A year ago the rate was $31.10 for the same money.

Thus, as some authorities believe, farm program payments can be important supplements to over-all income but the most serious, pervasive and far-reaching factor affecting agriculture is the inflation and high cost of capital that plagues the U.S. economy as a whole.

SUPPLY OF FUEL OIL AND OTHER ENERGY SOURCES

Mr. PELL. Mr. President, the administration yesterday announced several steps it is taking in regard to the supply of fuel oil and other energy sources.

After studying the administration's statement, I must say I have mixed feelings.

On one hand, I am pleased that the administration has at last and at least conceded that there is indeed a serious national problem of potential shortages of heating oils during the coming severe winter weather.

On the other hand, I am deeply disappointed that the administration is unwilling to take more aggressive action to assure that the schools, the hospitals, the businesses, and the people of the Northeast are assured of an adequate supply of fuels at reasonable prices.

Several weeks ago, I wrote to President Nixon urging that the administration authorize an emergency allocation of an additional 100,000 barrels a day of No. 2 fuel oil for New England under the oil import quota system. I believed and continue to believe this was the minimal action necessary to prevent actual shortages and severe and unwarranted price increases.

The response of the administration has been to extend the existing special import allocation of 40,000 barrels a day, with a provision that up to 80,000 barrels a day may be imported during the first quarter of 1971, with the excess to be deducted from import allowances later during the year.

In addition, the administration relaxed somewhat the existing restrictions on topping of imported crude for fuel oil,

and eased restrictions on importation of Canadian crude oil and of Western Hemisphere liquid gas.

Mr. President, the administration response to the fuel and energy situation is half-hearted and inadequate.

What is particularly disturbing to me are the statements that the administration intends to rely primarily on price increases to bring forth increased fuel supplies. There might be some argument for this approach if we were operating in a free market situation. But the plain truth of the matter is that with a mandatory Federal Government import quota system, we are not in a free-market situation.

It is absurd for the administration to rely upon a market mechanism of supply and demand when the Government itself controls supply through a quota system.

The administration has the power, through the oil import quota system, to increase heating oil supplies sufficiently to avoid both shortages and excessive price increases. The administration's failure to use that power is a measure of its concern for the average working man and his family who must bear the cost of sharply increased fuel prices during the coming winter months.

A SUPERB NOMINATION

Mr. PERCY. Mr. President, on September 25 President Nixon nominated nine distinguished Americans to serve on the Board of Governors of the U.S. Postal Service.

One of the nominees is from my State. He is George E. Johnson, founder, president, and chief executive officer of Johnson Products Co. of Chicago.

From modest beginnings, Mr. Johnson has built his cosmetic company into a major enterprise with sales in 1969 of $10 million. His clearly demonstrated business acumen should be invaluable to the new postal panel as it attempts to provide the American public with more efficient mail service, unhampered by the influence of politics.

Mr. President, Mr. Johnson's record as a business and civic leader in Chicago is a long and impressive one. He is chairman of the board of the Independence Bank of Chicago, vice president of Junior Achievement of Chicago and of the Chicago Economic Development Corp., and a member of the board of the Chicago Urban League, Wesley Memorial Hospital, the Economic Club of Chicago, the Lyric Opera of Chicago, and Urban Ventures, Inc.

Many of us in the Federal Government have drawn on Mr. Johnson's experience and expertise as we attempted to legislate responsibly in the area of minority enterprise, and we have always found him most helpful. I am confident that he will be an asset to the board of governors of the postal service, and wish to take this opportunity to salute the President for a superb nomination.

THE FATE OF THE FEDERAL BLUE-COLLAR WORKERS IN A REPUBLICAN ADMINISTRATION

Mr. PELL. Mr. President, the administration makes much of their attention to the workingman, the so-called blue-collar worker. Administration spokesmen seem to do a very good job of appealing to the workingmen's disenchantment with dissenting students, war protestors, and new life-styles in general.

However, the administration's real concern for the blue-collar workers of this country can probably be best seen in their treatment of those blue-collar workers for whom they have direct responsibility, the Federal wage board employees.

In my own State of Rhode Island, after many years of delay, the Monroney amendment was finally implemented and raises were announced. Yet, the Department of Defense has still to provide their workmen the retroactive payments due them.

The Senate and the House recently passed legislation designed to make some minor reforms in the antiquated Federal wage board system and to provide for some minimal increases in salary for wage board employees. The administration's response to this needed legislation has been a threatened veto and a suggestion that they would rather fire workers than pay them a decent salary. I hope the Senate and House conferees will not be intimidated by these threats.

Mr. President, the blue-collar worker is now beginning to understand the administration's message to them, "Law and order slogans—yes; fair wages—no."

I ask unanimous consent that a letter to the editor of the Providence Evening Bulletin of September 23, 1970, expressing the sentiments I outlined, be printed in the RECORD.

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

WHAT THE GOP HAD BETTER KNOW ABOUT A BLUE COLLAR'S LOT

This is in reference to our Republican friends in Washington, D.C. on the subject of the blue collar worker and his wages. To begin with your article of September 9, 1970, "Blue Collar Raise Up for House Action," states that a third round of pay increases for the blue collar worker would boomerang and cause the layoff of nearly 40,000 such workers in the DOD alone. Now if I may, I would like to backtrack a few months. In April we had a wage survey under the new federal coordinated wage system which is not much better than the old system that we had. We averaged 20 cents per hour in the journeymen's rate, plus another 29 cents on the conversion of the wage structure which was to bring the Navy's pay scale in line with the other services.

But as far as a pay raise is concerned we have averaged between ten cents and 20 cents over a period of years, no matter how the cost of living has increased. Uncle Sam is very frugal when it comes to his blue collar workers; after all he must figure what can they do about it? Next, the Monroney Amendment which became law in October, 1968, meant that if a comparable wage did not exist in the prevailing wage area, you could go outside the wage area to obtain wage data. Well the Civil Service Commission just could not come up with the proper guidelines to implement this amendment, therefore no one could use this. The Civil Service Commission felt that to designate certain trades such as aircraft would be discriminatory. This was the intent of the amendment if no comparable trades were in the area. So as of now this new Monroney Amendment is in effect, except for one detail they forget about. No one thought about appropriating funds for this; so far, no one has been paid retroactively.

Now to get back to the article that was in the Journal, the six per cent raise for all federal workers as of last January did not apply to the blue collar workers. The additional eight per cent boost for postal workers has nothing to do with us. The prevailing wage paid by private industry that our wages have been figured on in the past have not helped us, because they are not comparable to our type of work, the aircraft trades. The bill that was up for House action on the ninth of September would increase the journeymen from three steps in trade to five steps, which the supervisors were given under the new wage system. The percentages paid between three steps and five steps are minute, seeing that we are not being paid comparable wages to begin with. This is not the first time that we federal blue collar workers have been threatened with a reduction in force in order to keep us quiet. I don't remember these same people raising a fuss when they voted themselves over a 40 per cent raise not too long ago, or has everyone forgotten about that? Also I don't think that most people outside of government service realize that we pay as of now 76 per cent of our Blue Cross. This is for the pay period ending September 5, 1970 (we are paid every two weeks).

Regular Wages—$315.20

Deductions—$22.06 (retirement, $44.12 a month)

$17.30 (Blue Cross, $34.60 a month)

The above is correct and I believe that most industry in the private sector does better than this for their employees. We do accumulate sick leave and can accumulate up to 30 days of annual leave. But I know that anyone working in the private sector either gets a good bonus and/or a good amount of vacation after he has been employed for a reasonable amount of time. I am not complaining about working conditions with the government except for their policy on treating their blue collar workers on wages and benefits.

As I have stated before, I like my job, but that doesn't mean that I have to like the conditions under which myself and my fellow employees have labored so long.

VINCENT E. LUCAS.

COVENTRY.

DIRECT POPULAR ELECTION OF THE PRESIDENT

Mr. BAYH. Mr. President, on September 21, the Senator from North Carolina placed in the RECORD a letter from the Honorable Ed Gossett, a former Member of Congress and coauthor of the Lodge-Gossett plan. The letter contained a criticism of the method by which the Chamber of Commerce of the United States purportedly came to its decision to endorse the concept of direct popular election.

At the time, I indicated to the Senator from North Carolina that I believed the letter to be incorrect. I ask unanimous consent to place in the RECORD the text of a letter from the Chamber of Commerce of the United States to Mr. Gossett, explaining the manner in which the Chamber's position was arrived at and making it clear that the allegations contained in Mr. Gossett's letter are, in fact, incorrect.

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

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., Sept. 28, 1970.

Hon. ED GOSSETT,
Dallas County Courthouse,
Dallas, Tex.

DEAR MR. GOSSETT: Your letter of September 21 to Senator Ervin of North Carolina, which appeared on Page 33367 in the *Congressional Record* of September 23, 1970, is a complete misrepresentation of the facts on the procedure utilized by the National Chamber in developing policy on Electoral College Reform.

Your allegation that the National Chamber did not treat the proportional method fairly is an absolute misstatement of the facts.

First, the National Chamber's educational pamphlet on electoral reform, published in 1963 and widely distributed over a two-year period prior to the development of Chamber policy, included a detailed description of the proportional method.

Secondly, you will recall that you, yourself, were a member of the National Chamber's first electoral reform study group. You will recall, too, that you had the floor for at least thirty minutes of the two-hour meeting of this group the first time it met on March 25–26, 1965, and that you devoted your time almost exclusively to an explanation of the proportional method.,

Also, you may recall that the first National Chamber informal opinion poll of member organizations in February, 1965, covered all major alternatives—including the proportional method. Five choices were offered in that opinion poll which resulted in the nationwide popular vote receiving as many votes as the four other alternatives combined. The proportional method was preferred by only 18% of the responding member organizations.

Following the completion of your service to the National Chamber's Electoral College Reform Subcommittee, the group continued its study and ultimately, in the fall of 1965, voted unanimously in favor of eliminating the Electoral College as an institution. It rejected the proportional method and other alternatives in endorsing the nationwide popular vote by a subcommittee vote of 6–3. Those who voted in the minority favored the district method. Subsequently, the full Public Affairs Committee of the National Chamber endorsed the Nationwide Popular Vote by a vote of 24–16 and recommended its endorsement to the Chamber's Board of Directors.

The Board of Directors, noting the majority sentiment in favor of the nationwide popular vote and the minority sentiment in favor of the district method, decided to propose a dual policy in a membership referendum. The policy which was approved by membership referendum in January, 1966, by over 90% of the votes cast, is as follows:

"The Chamber of Commerce of the United States supports the adoption of an amendment to the Constitution that would:

1. Abolish the Electoral College

2. Provide for the election of the President and Vice President of the United States on one of the following bases:

A. Nationwide Popular Vote; i.e., a plurality of the popular votes cast in the nation at large.

B. The District Method; i.e., one electoral vote for each Congressional district and two electoral votes at large within each state, with a majority of electoral votes in the nation required for election."

Moreover, this policy was reaffirmed at the National Chamber's 1967 Annual Meeting Policy Session.

The latest reflection of membership opinion was produced through an informal opinion poll taken at our 1969 Annual Meeting, where all alternatives, including the proportional method, were listed. This poll showed that 78% of those responding preferred the nationwide popular vote.

The facts, then, show:

(a) the proportional method was indeed considered in the development of National Chamber policy;

(b) the proportional method was rejected on three occasions: in the first opinion poll, by the Chamber's Electoral College Reform Subcommittee, and in the latest opinion poll;

(c) every test of membership sentiment shows that the predominant opinion favors the nationwide popular vote for President of the United States.

Your disappointment that the Chamber did not endorse the proportional method is understandable in view of your long advocacy of that plan. However, we feel that you have done a disservice to the National Chamber, and to the cause of electoral reform by attempting to cast doubt on the validity of the Chamber's policy.

The National Chamber's study and policy development procedure were described in detail in the 1966 hearings before the Senate Subcommittee on Constitutional Amendments, in later testimony before the Senate Subcommittee in 1967, before the House Judiciary Committee in 1969, and again before the Senate Subcommittee in 1970. I believe that no other organization has made a more thorough study of electoral reform or a more concerted effort to determine the opinion of its membership than the Chamber of Commerce of the United States.

I am sending a copy of this letter to each United States Senator to counter any false impressions that may have been developed because of your unfortunate communication to Senator Ervin.

Sincerely,

HILTON DAVIS,
General Manager, Legislative Action.

SAM J. ERVIN, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: No one living has worked longer or harder for Electoral Reform than I. The Lodge-Gossett Amendment—the proportional system of electoral reform—passed the Senate in 1950 by a vote of 64–27. As I recall, at that time, the only Senator advocating the direct election system was Senator Langer.

More recently, I have served on a five-man committee on Electoral Reform, which committee was headed by the late Senator Edwin C. Johnson of Colorado, and also included the late Senator Scott Lucas of Illinois. We secured the passage by 13 State legislatures of resolutions calling for an equitable division of the States Electoral vote (see attached memo). None of us endorsed the direct election formula.

I opposed the direct election system for many reasons, the chief of which is that it would destroy the Federal System.

However, the purpose of this letter is to tell you that the United States Chamber of Commerce's purported endorsement of the Direct Election system is completely false. Notwithstanding, the Senate action in 1950, and notwithstanding the continued efforts of many of us since that time, the United States Chamber of Commerce in taking their so-called poll on the subject completely omitted the proportional system. Their poll was dishonest and misleading. I'm convinced that a vast majority of their membership are strongly opposed to the Bayh Amendment.

Cordially yours,

ED GOSSETT.

P.S.—This letter may be used in any way you wish.

CURRENT CAMPUS PROBLEMS—ADDRESS BY DR. ERNEST L. WILKINSON

Mr. ALLOTT. Mr. President, a close and admired friend of mine has been kind enough to make available to me a thoughtful address he recently delivered on the subject of current campus problems.

My friend is Dr. Ernest L. Wilkinson, the distinguished president of Brigham Young University. He delivered the speech on September 3 at the Oakland, Calif., Rotary Club.

Dr. Wilkinson has always combined scholarly detachment with a practical mastery of important responsibilities.

The speech is both idealistic and practical. It does not pull any punches in cataloging failures—failures by any Nation, and failures by the academic community.

But Dr. Wilkinson is not a passive, pessimistic man. His deep religious faith and his noble patriotism lead him to fight failures when other men are content to complain.

Dr. Wilkinson offers 11 suggestions for improving the condition of our colleges and universities. So that all Senators may profit from his stimulating speech, I ask unanimous consent that it be printed in the RECORD.

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

ACADEMIC ANARCHY VERSUS MANAGEMENT OF UNIVERSITIES

(By Ernest L. Wilkinson)

INTRODUCTION

I want it understood that what I have to say will be said on my own responsibility as an individual, and not as president of Brigham Young University, for it has not been cleared with my Board of Trustees.

Since my time is necessarily limited, I may have to sound somewhat dogmatic. If I had more time I might make some mild, but only mild, reservations on what I say to you. I find myself in somewhat the same position as a federal judge before whom I practiced law at one time. He would generally announce a decision at the end of a trial and always preface his remarks with the comment that "this court may be wrong but it is never in doubt."

EXTENT OF DISTURBANCES AND RIOTS

I need not go into detail as to what has been happening on the campuses of America, but as a preface for suggestions I intend to make I will quickly summarize the extent of the student disturbances and riots and the demands and objectives of the militants. The problem is not one of normal academic unrest, but of academic disruption, violence and anarchy.

According to the report of J. Edgar Hoover on campus disturbances for year ending in June 1970, there were 1785 demonstrations on the 2300 college campuses. On some campuses there were many. On many other campuses, as at Brigham Young University, which now in terms of full-time students is the largest private university in the country, there were none. We don't claim to be entirely unique. We are probably, however, the only large campus which has been free from trouble.

The closing months of the last school year brought more riots, demonstrations, boycotts, protests, open warfare, vandalism and other

disorders in American colleges and universities than at any other time in the history of the nation. These resulted in student deaths from shooting, the wounding and injury of scores of persons, and the arrest of hundreds. Damage ran into the millions of dollars, while the loss of time and work in education is inestimable. Let me give you just a few examples of these riots.

At Santa Barbara, the students completely burned a Bank of America branch.

At Cornell fire gutted the black studies center.

At Rice, fire which was started with kerosene, did extensive damage to the ROTC Building.

At Berkeley police fought a pitched battle for three days with radicals who hurled rocks, smashed windows, ripped down the American flag, attacked a faculty club, destroyed the furniture and smashed down the doors.

At Kansas a fire bomb destroyed much of the Union Building. Damage was estimated at $2 million.

At Stanford fire from arson destroyed the *life's work of several scholars* at Stanford's Center for Advanced Study in the Behaviorial Sciences. Total property destruction at Stanford was estimated at $580,000 in six weeks.

At Fresno State College fire bombs destroyed a $1 million computer.

After President Nixon announced our entry into Cambodia there were scores of disorders. The most serious of these riots were at Kent State and Jackson State resulting in the tragic deaths of several students. On May 8 a new "Strke Information Center" at Brandeis University reported there were 356 schools striking with faculty and administrative support. These were accompanied by a rash of attacks on the ROTC. Records kept by the Army, Navy, and Air Force show more than 400 anti-ROTC incidents at many of the 364 schools where ROTC units function. There were 73 attempts to blow up ROTC buildings.

Fire bombs were thrown into ROTC buildings at Oregon State, Princeton, Hobart College and Washington Univeristy at St. Louis. Shots were fired into the home of the Stanford ROTC commander. At Southern Illinois students threw fire bombs out of windows. About 300 students went on a fire-setting spree at Michigan State. The National Guard was called in as 1500 rampaging students sacked the ROTC building at Maryland.

There were 67 instances of vandalism in which ROTC offices were entered, records were destroyed, weapons and ammunition stolen and property defaced. One hundred forty-five assaults involving personal injury and damage to property were launched.

At the University of Michigan on May 7, a group of students occupied the ROTC building for nearly 24 hours. A fire was started in the basement. No one was punished—university authorities said none of the vandals could be identified. If during a 24-hour period no method could be found to identify at least part of these students, those responsible for identification either did not want to find out or were overly naive.

ROTC enrollment has dropped from 298,-952 in 1961–62 to 157,830 in 1969–70, or nearly 50%.

Since April 30 nine schools have voted to discontinue ROTC including Harvard, Dartmouth, Yale and Columbia, despite the fact that in the past decade 63% of all newly commissioned officers in the Army came from ROTC units. This to my mind shows the schools which closed out ROTC have little regard for duty to their country.

One reason for the zeroing in on Kent State University by so many radicals is that it houses the Liquid Crystal Institute, home of research projects with military potential.

With this background of student disturbances and riots (1785 during the last fiscal year) you will appreciate the story that is going the rounds of academic circles that a college president died and was consigned to Hell. But he was there for six months before he knew where he was. The current joke among college presidents themselves is that becoming an administrator in higher education today is comparable to buying a ticket on *The Titanic!*

OBJECTIVES OF THE REVOLUTIONARY LEADERS

The tragic aspect of most of these destructive riots is that the leaders openly admit they are intent upon the "destruction of our existing social order." Their heroes are the leaders of the most ruthless dictatorships—Lenin, Mao-tse-tung, Castro, Ho Chi Minh, Che Guevera. During the riots at Columbia, members of "Students for a Democratic Society" wrote on college buildings, "Lenin won, Castro won, and we will too." In some of their rioting they have carried the red flag of the Communist Revolution and the black flag of anarchy.

Michael Klonski, National Secretary of SDS, has written, "The National Liberation Front in Vietnam and the oppressed peoples in the U.S. are fighting the same enemy, American Imperialism . . . Remember Ho, Mao, Fidel, etc."

Eldridge Cleaver expressed the same philosophy in saying, "We're out to destroy the present machinery of the ruling class."

The National Liberation Front, another militant student organization, sometime ago published and mailed to citizens of California its "Declaration of Entity and of Purpose," which declared, "The current government of the United States of America to be an unlawful and illegal one," and gave notice of their intent to "conduct a controlled punitive action against United States Federal forces and municipal forces on a limited scale from the City of San Francisco on the south, to the Oregon border on the north." It ended by declaring "All citizens are hereby notified that a state of revolution shall begin as of March 15, 1970, all power to the people." There is no question but that the hard-core leaders of these students riots were either Communists or believe in Communism. There is no question either but that some have engaged in treasonable activities, which is that of giving aid and comfort to the enemy even though they have not been legally charged with such activities.

These leaders are willing to seize on any issue that will accomplish their aims. At the beginning of the disturbances in Berkeley, the chief grievance was the racial issue. This permitted them to inflame not only blacks but sympathetic and sometimes gullible whites against the so-called "establishment."

What is not generally known is that the decision to exploit this issue was originally made in Moscow in 1928. Instructions were then given to use the Negro question to incite trouble and revolution in the United States. As has been pointed out by Manning Johnson (a former ranking Negro Communist in the United States, who later broke with the Party and became an undercover worker for the FBI), the Communists from then on busied themselves with the Negro. They infiltrated Negro churches and social groups in order to prepare the Negroes to be sacrificed in the revolution to come. It is a distinct tribute to most American Negroes that most of them did not fall for the Red blandishments.

Later, as the war in Vietnam became unpopular, the revolutionists emphasized the Vietnam war issue. When, in turn, the administration let it be known that our troops would be withdrawn from Vietnam as soon as practicable and the Vietnam war issue was dying out, they seized upon the Cambodian issue, and now that our troops have been withdrawn from Cambodia, the revolutionists are emphasizing air pollution, the decay of our cities and the athletic programs of our universities. These shifting issues are consistent with the instructions that have been continually issued by the national leaders of the Students for a Democratic Society, which are that its members should make use of any issue which is locally most popular.

While a number of university administrative officers blame the war in Vietnam or the incursion in Cambodia as the cause of student unrest, this claim is patently false. The foreboding of campus disturbances occurred long before today's activists even knew where to find Vietnam on the map. Nearly all unbiased authorities agree that the termination of the Vietnam war will only shift the emphasis of the campus militants. To me, attempts to blame President Nixon's decisions for campus unrest represent nothing but an attempt by university administrators to cover up their own failure to govern their universities. If Vietnam and Cambodia were the cause of campus disorders, why is it that there are scores of universities and colleges in this country who have had no real disturbances or riots and who have consequently received no publicity?

I admit that the decision to go into Cambodia gave the student revolutionists a much needed opportunity to further inflame their fellow students, but this was because the fuse of revolution had already been lighted and because somehow our universities had failed to teach our students the lofty concept of freedom which gave us birth and has sustained us as a nation and to which the Vietnamese are entitled as much as are we. Our students have not been inspired with Douglas MacArthur's hallowed words of "duty, honor, country."

SUGGESTIONS FOR BETTER MANAGEMENT OF UNIVERSITIES

I now come to what should be the constructive part of my talk—my suggestions for better control of the University—in other words, *Proper University Management* vs. *Academic Anarchy.*

At the outset may I make it plain that the universities themselves are not primarily to blame for the attitude and lack of proper motivation on the part of students who come to their campuses. We will not entirely reform our universities in this country until we reform our society. We are failing as a nation because parents are not fulfilling their roles as parents but are excessively concerned with their occupations or social life and pay too little attention to the proper training of their sons and daughters. They have not taught adequate standards to their children, or assumed responsibility for their proper spiritual, cultural and patriotic motivation.

We are failing as a nation because too many teachers are less concerned with effective teaching than they are with "research grants," the number of hours they teach, the class load they carry, their rate of pay, their retirement benefits, and in general "what's in it for me." Many have lost the sense of dedication which is the hallmark of every good teacher.

We are failing as a nation because too many men of the cloth have forgotten to minister to their flocks and have discontinued preaching the word of God. They have turned into politicians and preach that which is the uncertain opinion of man rather than the sure word of God.

Nevertheless, I do think that the universities themselves must plead guilty to having permitted and in many cases encouraged destructive disturbances and riots on their various campuses. What suggestions I have today will be in this area.

My first suggestion is that we must abandon the idea that the university is a law unto itself and that a campus is an asylum for

those who would spawn seditious ideas and otherwise violate the law. The medieval custom or tradition which permitted sinners and violators of the law to flee from civil justice by gaining sanctuary in a monastery or university, where they could do penance for their misdeeds, has no vestige of justification in our modern civilization. The only sound concept was enunciated by the late Theodore Roosevelt who declared that, "No man is above or below the law." This should apply with special force to university students for they are the ones who ought to set an example to society.

I suspect that up until recently, the preponderant feeling of university presidents has been that universities ought to govern themselves and be essentially free from any civil or criminal restraint. Admitting that it would be better if the universities did govern themselves, the fact is that many have not properly done so. I suggest that the moment an unlawful disturbance occurs, or other laws are violated, police, with or without invitation from school authorities, should enter the campus and see that the laws are enforced. I think the first duty of any citizen, especially a university president, is to assist in the enforcement of the law.

Second, a reappraisal needs to be made of the philosophy of many academicians that legislatures should not interfere either with the governance of universities or what is being taught there—that education is not the business of the legislature. My answer is that since the taxpayers put up the money for the creation and maintenance of the universities, their representatives, namely our legislators, should be very much concerned with what is going on in our universities. The discipline of many universities in recent years does not indicate to me that they have a celestial glory deserving to be free from close scrutiny. I submit also that there have been instances of seditious teachings and pornographic performances on our campuses, where legislators, in the absence of responsible action by university administrators, have been justified in stepping into the breach and taking action. Admittedly legislators are not above criticism, but they are on the whole responsible men, and I am willing to trust their combined judgment. With a clear recognition of their own limitations, they should nevertheless supervise education more, not less.

My third suggestion is that boards of trustees throughout the country ought to reassert their duties and prerogatives as trustees. In too many instances, over a long period of years, they have known relatively little of what transpires in their universities and have failed to set the policy of the institutions over which they presumably, but in some cases perfunctorily, preside. It has become the custom in many instances for trustees to delegate policymaking powers to faculties of the institutions, who often have a conflict of interest in resolving policy questions. While, of course, boards of trustees should use proper restraint in passing on the minutia of purely academic matters, that should not preclude them from overall decisions as to the propriety of courses to be offered or discontinued, in particular to pass on courses which would truly be in the public interest and not in the interest of pressure groups—courses which would lift and improve the quality of our civilization rather than destroy the established morals of a great civilization.

I read recently of a new course proposed by students in which the class was to photograph and reveal undercover police activity. This course is entitled, "Repression and the Movement." The description of the course reads as follows: "We will publish leaflets and pamphlets, sponsor rallies, photograph and reveal undercover pigs and anything else we can search our minds for. The course shall be run and controlled by those of us who participate." While this is not contained in the university catalogue, I am informed certain departments will give credit for it under the heading of "research." To assert, as in this situation, that the board of trustees should have no authority to step in and either initiate or veto courses is tantamount to saying that we should do away with our trustees and give academic anarchy full sway.

As in the case of legislatures, there ought to be more and not less supervision of our universities by boards of trustees.

My fourth suggestion is that boards of trustees should give almost exclusive power to the presidents of institutions to carry out decisions of the boards and to administer the affairs of the institutions. Unfortunately in many institutions the boards have delegated so many administrative functions to the faculty that when a crisis arises the president is often powerless to act.

The often impossible situation of a university president is described in a short parody entitled, "The Lament of a University President."

I'm not allowed to run the train,
The whistle, I can't blow.
I'm not the one who designates
How far the train will go.
The students rant and rave and scream
For this privilege or that.
The faculty is wont to change
Curriculum format.
I'm not allowed to blow off steam,
Or even ring the bell.
But let the damn thing jump the track,
And see who catches hell.

The fact of the matter is that faculty members usually are not hired as administrators, and many of them have little competence in this respect. While, of course, the stature of a university is directly correlated with the quality of its faculty, we must remember that administrative decisions often cannot wait on the slow, deliberative process of faculty analysis. Imagine Dr. Hayakawa having to wait for a faculty senate to tell him whether he could jerk the wires off an unauthorized sound truck.

My own view is that (1) the trustees should determine the policies of the university, (2) the president should have the authority and responsibility to carry out those policies, and (3) the teachers should focus their activities on teaching and related activities. This division of duties has been tragically ignored in many institutions. Obviously the president should obtain the advice of faculty members on academic matters. I can't imagine that a responsible president would not welcome, and depend on suggestions from his faculty on many matters, for faculty expertise is the great resource of any university. But there is no way that the faculty can possibly share the perspective or respond to the responsibility that a president must assume. When it comes to overall discipline on the campus, the President must be the Commander-in-Chief. Consequently, when a new president takes charge, he should have the right to choose his entire administrative staff. Otherwise he runs the risk of failure in carrying out his policies.

The power to nominate faculty members should be restored to him also. They should not be chosen exclusively by their friendly peers on the faculty without a careful, independent investigation by the president. When faculty members, department heads, or even deans have complete freedom in selecting fellow faculty members, it is only natural that they select people of their own kind, including their own academic and political preferences and biases. This makes for an imbalanced faculty which can hardly be obective in searching for the truth. Admittedly the president may also make mistakes in suggesting faculty appointments, but surely he is as concerned as any dean or department chairman and is less likely to be governed by departmental friendship and traditions. Furthermore he is directly accountable to his trustees whereas faculty members are not. When he has to "face the music" he is more likely to play a responsible tune.

My fifth suggestion is that there should be much more emphasis on teaching on the part of faculties. I do not believe in the prevailing philosophy of "publish or perish." While of course research should be encouraged, I would rather have an undergraduate child of mine in a classroom under a teacher of limited scholastic reputation who had the ability to inspire, than under a Nobel Prize winner, who either never had the ability to teach or has lost the zest for it because of his being absorbed in research. While research is indispensable for the university as a whole, it is not necessary for all teachers to be engaged preponderantly in research—indeed some ought to be required to do very little. I understand that in certain leading institutions of higher learning in this country most undergraduate classes are taught by student assistants. That is a tragedy and a serious indictment of an administration which permits it. Indeed, freshmen should be taught by the most experienced and inspirational teachers. Many teachers do not want to teach these classes. They therefore prevail upon their friend (the department chairman) to free them from these classes. That is why there needs to be a strong president with supporting officers—who can help see that proper assignments are made.

In the sixth place universities should not condone any encouragement of riots or revolution by faculty members. Any teacher who either *encourages or participates* in such conduct should be discharged forthwith.

A staff report of the Florida House of Representatives (1/16/70) Select Joint Committee on Campus Unrest and Drug Abuse, reported in part: "In nearly every instance of campus unrest problems which could be documented, we find that the leaders were for the most part being counseled, guided and occasionally directed by faculty members."

Robert Nisbet, University of California professor of sociology, writes in the British magazine Encounter: "Without faculty stimulus, financial contributions and other forms of assistance, the student revolt could never really have got off the ground.

"Not obviously, all of the faculty . . . But it was . . . a powerful minority, often contained within it Nobel Prize winners and others of equal stature . . ."

Dr. S. I. Hayakawa, President of San Francisco State College has said: "The worst enemies of American higher education are professors, or a minority of professors within it. They've got an awful lot of routine undergraduate teaching to do, and they are bored stiff. The only way they can get a little excitement . . . is to appeal to their students for admiration and they appeal therefore to the most radical and most immature of their students."

My seventh suggestion is to eliminate our loose ideas of permissive education and lack of discipline and restore to the campus the rigorous discipline which made our institutions great centers of learning—not of revolution.

In order to gain immunity for the unlawful acts which they have already committed and still threaten to commit, many of the rioters such as those at Columbia demanded amnesty for all of their violations of law; others, such as students at the University of Colorado, would remove from college administrators all rights to discipline any student and would have the discipline in each case administered by the courts; and to cap it all, students at the State University of New York at Onconta demanded that agitating students be given a weekly allowance of twenty-five

dollars for spending money so they could continue their agitation.

In my judgment students who would destroy either the government which gives them more opportunities than any other nation in the world for both their material and educational advancement, or who would destroy the educational institutions created by our government or made possible by our system of free enterprise, should be expelled forthwith. There should never be appeasement or capitulation or amnesty for these militant students, for any show of weakness will only result in further academic anarchy.

My eighth suggestion is that boards of trustees and/or presidents, and/or faculties should not be permitted to close schools early and give academic credit for courses not completed or without the requisite examinations. *Higher Education & National Affairs* reported on May 22 that fourteen universities and colleges had closed for the year. The total was probably much higher than that.

I understand that at one of our leading state universities this year the student assistants who taught 60% of the undergraduate students struck for an entire month, in the middle of the semester, during which time there were no classes. Also when trouble arose near the end of the year they dismissed classes at least a month early. Yet the students received full credit. This is academic anarchy. This is a violation of the contractual obligation of the university, a fraud on its students and the employers who subsequently employ them.

In a letter published in the *New York Times*, five students took the Harvard faculty to task for its vote on May 6 to allow students not to complete their academic year but get credit for their courses anyway.

This action, the students said, constituted "a complete abandonment of academic standards by a university faculty, previously considered among the world's greatest." I agree with these students. Indeed, to my mind, and I say this as a Harvard man, it will not long continue to be among the world's greatest unless, instead of abandoning, it improves its standards of conduct and requirements of scholarship.

It is gratifying that the viewpoint of these Harvard students has been vindicated by the Court of Appeals for the State of New York (the highest court in that State). In a recent ruling that court, in an action filed by the New York and Rutgers Universities Schools of Law, unanimously held that law school students who (1) had not taken the number of classroom periods specified for any particular course in the catalogs of their respective approved law schools, and (2) who had not taken final course examinations to test their understanding of the context of the course, were not eligible to take the bar examinations in New York State, even though they had been given credit for those courses and had been graduated by their respective institutions. This of course applied not only to New York and Rutgers Universities, but to other universities as well. The tragedy is that students who had paid tuition for full courses, but were not given them, are now being denied the right to take bar examinations. Thanks to the Court of Appeals the integrity of legal education was preserved despite the lack of integrity of educational administrators.

Nor is there any excuse for the suggestion that colleges should close down so students may take a week or more to engage in politics just before the elections. With their meager knowledge of what makes our country "tick" and without having yet made any major contribution to our country, there is ground for the argument that they have done too much politicking already.

My ninth suggestion is that our laws ought to be more vigorously enforced and our judges ought to be more severe in their judgments. It is shocking to me as a lawyer to note that although hundreds of students have been arrested around the country, few have been brought to trial. Those who have faced a judge have escaped, for the most part, with small fines for misdemeanors.

There have been only three arrests on federal charges of sabotage and destruction of government property.

More information should be given by universities to their students as to federal laws. College students and faculty are shocked when they learn how tough these laws are:

A 1917 law making any attempt to interfere with and obstruct the United States in preparing for and carrying on defense activities an act of criminal sabotage. This carries a penalty of 30 years in prison and a $10,000 fine.

The destruction of Government property is punishable by 10 years in jail. It also carries a $10,000 fine.

Law enforcement officials complain they have trouble getting students or school authorities to identify anyone involved in the anti-ROTC incidents. No wonder that the revolutionaries on campus repeat the same acts time and time again on the same and different campuses.

My tenth suggestion is that there ought to be better business management among institutions of higher learning. If business men, who pay the taxes, ran their businesses with the profligacy as many institutions of higher learning they would go broke overnight. I have time for only one example. In 1958 the Educational Facilities Laboratories conducted a survey of the utilization of buildings of 60 four-year, degree-granting liberal arts colleges in the North Central region of the United States. Of the 53 colleges reporting, there was an average utilization of only 40 percent of classrooms and 25 percent of laboratories. Yet most of them planned new buildings or the renovation of old buildings, and many were clamoring for federal funds for this purpose. This to my mind indicates an extravagance which should not be condoned either by the tax payer or private benefactors.

My eleventh and final suggestion (you will note I have one more than the Ten Commandments given to Moses) is that instead of our states giving fixed appropriations to our state institutions of higher learning, they should give a certain sum to each student which he can use for his tuition or educational expenses in any accredited university of his choice, public or private, church-related or otherwise. When most of us were in college three-fourths of the students attended private colleges; now three-fourths of them attend public institutions. Some of these state institutions have become so large they have lost the intimate touch indispensable for proper education, which is one of the genuine causes for dissatisfaction on our campuses.

This change in appropriations would permit a student, if he desired, to attend some well-recognized private institution where there have been no riots or disturbances and where there is the proper climate for obtaining an education. This would bring about a competition in education comparative with competition in business. This would be healthy for education and do away with the monopoly and uniformity that state institutions are fast developing. It would make both state and private institutions responsive to the will of the legislature and to the parents who, after all, are the ones who pay the money for the education of their children. It would also force educational institutions to be more economical in operation, which is badly needed. I do not claim credit for this idea. It is being increasingly asserted by prominent educators, many in state institutions. Stated briefly, the effect of this could be that universities would have to satisfy the students and their parents rather than their own smug selves.

In conclusion may I say just one word with respect to the claim advanced by some extreme militants—that the demonstrations and riots are necessary to preserve the traditional concept of free speech. This is nonsense. A survey of 60,447 faculty members conducted last year under a sponsorship of the Carnegie Commission on Higher Education found more than 80 percent of those who replied agreed that "campus demonstrations by militant students, instead of being necessary to preserve free speech are a threat to academic freedom."

May I also comment with respect to the claim that the disruptions on our campuses are caused by a lack of money. In the words of Sidney Hook that is "noisome hogwash." The universities which have had the most trouble have been those which have had the most money. All the money in the world will not correct the false notion that the purpose of a university is to engage in political reformation rather than education. It will only accelerate and aggrevate the present malady. Political reformation should be left to our law-makers, not the noisy militants on our campuses.

When our university administrators abandon their administrative cowardice and show the courage necessary to conduct sound and sensible educational programs instead of attempting to usurp the functions of our legislatures then, and only then, will there be bright hope for the future of higher education in America, for only then will universities and colleges receive the support of the American public.

WILL THE TURBOTRAIN DIE?

Mr. PELL. Mr. President, in past weeks there has been much discussion about the advantages and disadvantages to the public weal of building an airplane capable of transporting people across the ocean at supersonic speed. In New England where our airports are saturated, our highways are filled with bumper-to-bumper traffic, and trains are nearly nonexistent, we have been concerned with a more immediate and practical problem; that is, whether the one ray of hope New Englanders have had for improved transportation, the turbotrain, will be taken off the tracks by the Department of Transportation.

Mr. President, I ask unanimous consent that an editorial in the Providence Evening Bulletin of September 22, 1970, speaking of this problem, and an editorial in the New York Times, September 29, be printed in the RECORD.

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

[From the Providence (R.I.) Evening Bulletin, Sept. 22, 1970]

WILL TURBOLINER DIE?

If the high speed TurboLiner train service between Boston and New York is to be continued and expanded, it is as shatteringly obvious as a runaway freight train that the live-or-die decision rests in the hands of Transportation Secretary John A. Volpe. Fortunately, few men in Washington are as keenly aware as Mr. Volpe of the need to strengthen passenger rail service in southern New England.

Department of Transportation officials are frank to admit that the continuance of the service is in doubt. Contractual relations with United Aircraft, builders of the low-slung high speed trains, are about to run

out. Further, no new money is in sight for the trains in the department's new budget—a budget still not approved by the Congress.

Creation of the service, said a D.O.T. spokesman, was an investment in an "equipment demonstration," and not a marketing project as was the MetroLiner service between New York and Washington. It is possible that the TurboLiners may be reclassified as a "marketing demonstration," but no decisions have been reached. The situation, said one spokesman, is "really fluid."

The first comment that comes to mind is simple. If the TurboLiner was simply a testing of gadgetry, why pour millions into a job that was scheduled to be a dead end operation? If the testing was done to determine practical usefulness in the market, why weren't plans made two or more years ago to find the money to support extension of the service when and if it proved successful?

Penn Central is happy with the kind of service the two trains have given. Despite publicized breakdowns now and then, the railroad reports that the trains completed 96 per cent of their scheduled runs. Further, patronage has held in the vicinity of 85 per cent of capacity, a figure that seems almost astronomical in terms of volumes on standard passenger runs.

There is talk that a new surge of life for the experimental trains may come if Rail Pax orders them. Under pending legislation, Rail Pax may be created as a federally-sponsored agency to help railroads in financing new equipment. Well and good—if it happens. Acceptability of the trains by Rail Pax would be good news for United Aircraft, the manufacturers.

But what of the immediate problem—the preservation of the TurboLiner service between Boston and New York this fall? There have been suggestions for adding four new cars to the two trains and then for going to Congress for more money to turn the "equipment demonstration" into a "marketing demonstration"—but no decisions on the issues are in sight.

Because of the contractual arrangements among the government, the manufacturer, and Penn Central, railroad officials are unable to determine the exact relationship between fare income and operating expenses. A study of that relationship would be highly useful; if adding more cars to the two trains would increase the revenue potential, perhaps Penn Central could go it alone.

But Penn Central is in trouble financially, and it cannot be expected to assume the fiscal risks of continued service if it does not have some clear figures on revenues and costs. Since the trains have proved themselves mechanically successful and operationally attractive, it would be a sad blow at mass transporation in southern New England if they went out of service just by default of D.O.T. action.

There is reason to hope that Mr. Volpe, who has shown himself to be thoroughly aware of the need to revive and strengthen mass transporation in the public interest, will take immediate hold of the Turbo-Liner situation and get busy at the task of keeping it going as a marketing venture. If he needs help, southern New England waits only for a call.

SLOW TRAIN

Two statistics tell the story of topsy-turvy Federal transportation policy. In the fiscal year that ended on June 30, the Federal Government provided $2.2 billion for urban highways. All programs for urban mass transit in the coming year—bus lines, subways, commuter railroads—total $214,000,000, less than one-tenth as much.

A six-lane or eight-lane highway cutting through a densely populated city disrupts neighborhoods and evokes intense bitterness. Such a highway is not nearly so efficient or economical in carrying a high volume of rush-hour traffic as is a subway or a railroad. Yet the money pours forth for the superhighways from the Highway Trust Fund, while mass transit languishes for want of appropriations.

Against this background, the two bills which the House of Representatives considers today are pitifully small. The first authorizes $3 billion for matching grants to states and cities for mass transit facilities and equipment over the next five years. So many cities across the country—San Francisco, Chicago, New York, Washington, D.C.—are undertaking to build or rebuild their mass transit that this sum could usefully be spent in one year instead of five. Even so, the House version is substantially better than the Senate bill which authorized only $1,860,000,000.

A second bill, already passed by the Senate, would extend the high speed ground transportation act for another year and authorize $21 million for research and demonstration projects. It is under this program that the Penn Central has received modest financial help in developing the Metroliner between Washington and New York and the Turbotrain between New York and Boston. Both are good projects which have only partially realized their potential. A rational transportation policy would lead to a substantial investment in rebuilding the roadbed, increasing the frequency of service and modernizing ticket selling.

The opportunities in ground transportation are there if the Administration and Congress would get off the slow train and begin giving this problem the express treatment it deserves.

GALLUP POLL ON McGOVERN-HATFIELD AMENDMENT

Mr. CRANSTON. Mr. President, recently the George Gallup American Institute for Public Opinion issued the results of a nationwide survey on the McGovern-Hatfield "amendment to end the war" of which I was a cosponsor. In a questionnaire that went to 1513 households across the country the question was asked:

A proposal has been made in the Congress to require the United States Government to bring home all United States troops before the end of next year. Would you like to have your Congressman vote for or against this proposal?

Significantly, 55 percent of those asked responded positively to this question, 36 percent indicated a negative response, and 9 percent had no opinion. I recommend a close and careful scrutiny of the findings of this important survey to Senators and therefore ask unanimous consent that the complete poll and article be printed in the RECORD.

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

PULLOUT FAVORED BY MOST IN POLL—HATFIELD-McGOVERN PLAN IS BACKED IN GALLUP SURVEY

PRINCETON, N.J., Sept.—A majority of the United States Public favors the Hatfield-McGovern plan, which would end troop involvement in Vietnam by the end of 1971, according to the findings in the most recent Gallup Poll.

The public's favorable vote, recorded in a survey from Sept. 11 to 14 contrasts with the vote in the Senate on Sept. 1, when by a 55 to 39 vote the plan was rejected.

If the vote on withdrawal were left to the men of the nation, a fairly even division of opinion would be recorded. The scales are tipped dramatically in favor of withdrawal when the vote of women is taken into account. The latter favor getting out of Vietnam by the end of next year by the ratio of more than 2-to-1.

The difference in the views of men and women is one of the greatest recorded on any national issue in recent years.

The issue of Vietnam has acquired more and more partisan overtones during the last year, with rank-and-file Democrats now favoring withdrawal by a ratio of 61 per cent to 29 per cent—while Republicans are almost evenly divided. Significantly, the Democrats in the Senate voted in favor of the plan by a 3 to 2 ratio.

One consolation for those who oppose a fixed-time withdrawal is that the best-educated group—with the highest voting turnout—are almost evenly divided.

DETAILS OF BILL

The Senate bill was sponsored by Senator Mark O. Hatfield, Republican of Oregon, and Senator George S. McGovern, Democrat of South Dakota, provided that the only military funds that could be spent in Vietnam after April 30, 1971, were those for the orderly termination of operations and the systematic withdrawal of armed forces by Dec. 31, 1971.

The Vietnam issue has lately not loomed large in the minds of voters, compared to earlier days, but it does lie smouldering and could easily become an issue between now and Nov. 3.

To obtain the results reported today, a total of 1,513 adults were interviewed in person in more than 300 scientifically selected cities, towns and rural areas of the nation. This question was asked:

A proposal has been made in Congress to require the United States Government to bring home all United States troops before the end of next year. Would you like to have your Congressman vote for or against this proposal?

The following table shows the results nationally and by key groups in the population:

	For	Against	No opinion
Midwest	56	35	9
South	49	38	13
West	51	44	5
OCCUPATIONS			
Professionals and business	50	43	7
Clerical and sales	52	42	6
Manual	59	33	8
Farmers	50	31	19
COMMUNITY SIZE			
1,000,000 and above	61	28	11
500,000 and above	61	28	11
50,000 to 499,999	50	43	7
2,500 to 49,999	61	33	6
Under 2,500	52	38	10

HEALTH MANPOWER FINANCIAL NEEDS

Mr. HART. Mr. President, we shall soon have before us for consideration the Labor-HEW appropriation bill.

One of the sections of this bill, one that is critically important for every American, young or old, is the section providing funds for what we call health manpower. By that, we mean Federal assistance to our institutions for the training of students of medicine, osteopathy, dentistry, veterinary medicine, podiatry, and optometry.

There is a lot of talk, both in Congress and around the country, about the impending crisis in delivery of medical service. The HEW appropriation bill is the place to do something about it.

I ask unanimous consent that there be printed in the RECORD the testimony I presented on June 16 to the Senate Appropriations Subcommittee on this sub-

ject. Additionally, I ask unanimous consent to insert excellent, factual summaries of the financial need at Wayne State University and the University of Michigan.

I hope that these recent, hard figures—which I am sure are typical of the situation across the Nation—will be persuasive in encouraging both Congress and the Chief Executive to permit us to provide more adequately for the health of our people.

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

HEALTH MANPOWER

(Testimony of Senator HART)

Mr. Chairman, this nation faces a serious crisis in its system of delivering health care to people.

Two major causes of this crisis appear to be a shortage of health professionals and the inefficient use of medical personnel and facilities.

There is little your subcommittee can do about the latter cause.

However, the level of funding of health manpower programs does fall within the jurisdiction of this subcommittee, and quite frankly, the Administration's budget requests are inadequate to meet the nation's health crisis.

You have heard testimony that the nation faces a shortage of 52,000 doctors and 140,000 nurses. Even if part of that shortage could be eliminated through more efficient use of personnel, the nation clearly is in need of more health professionals, not to speak of the shortage of people entering allied health fields.

In his testimony before your subcommittee, John A. D. Cooper, President of the Association of American Medical Colleges, gave three reasons for the continuing shortage of medical personnel. I would like to repeat just one of those reasons—his third:

"Admitting the contribution of the two previous factors to the continuing problem of the M.D. shortage, I believe that the single most crucial determinant of the situation we face is our utter failure as a nation to make the M.D. shortage a high-priority item in the expenditure of our efforts and resources."

It seems that concern for misplaced priorities is not confined to public officials.

Congress has established several programs designed to help ease this crisis but unhappily, despite recognition of the crisis, the Administration has not seen fit to request the fully authorized appropriation for these programs. That failure is magnified because the demand even outstrips the authorization ceiling.

Perhaps the best way to make these gaps clear is to list the demand, the authorization and the administration budget requests for these programs.

Grants for construction of medical teaching facilities: demand, $600 million; authorization, $225 million; budget request, $118 million.

Loans for Medical Students: demand, $43 million; authorization, $35 million; budget request, $12 million.

Loans for Student Nurses: demand, $27 million; authorization, $21 million; budget request, $9.6 million.

In addition, I understand that more than one-half of the nation's medical schools have received special project grants under the Institutional and Special Project Grants program of the Public Health Service Act.

The demand for these grants underscores the crisis many of the medical schools face in meeting operating expenses.

Unmet needs to modernize medical teaching facilities and medical school curricula may well sentence the people of this nation to health services one might expect to find in a developing country rather than in one with an annual gross national product approaching the $1 trillion mark.

But here again the budget request is far beneath the authorized ceiling for the Institutional and Special Project Grants program. The Administration could ask for $168 million; it has asked for only $113 million.

Mr. Chairman, your subcommittee has heard and will hear witnesses far more knowledgeable in this area than I, but even a layman can read the unmistakable signs that a health care gap exists in this nation, and that the gap is widening.

We in Congress should take the lead in doing at least as much as present laws allow. I urge that the Senate approve appropriations matching the full authorization for each of these programs.

In a related area, I support a budget increase of $4 million over the budget request of $11 million for staff support of University-affiliated centers, authorized by PL 88–164.

These centers provide interdisciplinary training for persons working in the field of mental retardation and related disabilities.

The Association of Directors and Administrators of University-affiliated centers reports that more than 60 universities are conducting training programs and centers have been or are under construction at 19 universities.

Last year, the Senate approved $11 million for this activity, but Administration released only $9 million, its original request.

As a result of the Administration's cutback, programs for which facilities already had been constructed at Georgetown University, Boston Children's Hospital, the University of California at Los Angeles and the University of Colorado had to be delayed for a year.

In addition to making up for that delay, new centers and programs are being started at other universities. It seems to me that the normal growth of this program justifies an increase in the appropriation to $15 million.

Dr. Julius S. Cohen, associate director of the Institute for the Study of Mental Retardation at the University of Michigan, has a more detailed presentation on this program which I commend to your attention.

FINANCIAL AID FOR MEDICAL STUDENTS—OUTLOOK FOR 1970–71

The outlook for financial aid for medical students at Wayne State University has deteriorated markedly over the past year. The reasons for this are both national and local in nature.

NATIONAL FACTORS

The Federal Health Professions Loan and Scholarship Program has been sharply curtailed over the past few years. This program provides aid to students in the following professional schools: medicine, osteopathy, dentistry, veterinary medicine, podiatry, and optometry.

Table I shows the reductions in national funding over the past few years and the proposed funding for 1970–1971.

TABLE I

	FHP loan	FHP scholarship
1968–69	[1] $26,400,000	[1] $11,200,000
	[2] 14,200,000	[2] 5,200,000
1969–70	15,000,000	15,400,000
	7,900,000	7,200,000
1970–71	12,000,000	15,000,000
	6,300,000	7,000,000

[1] Total for all professional schools.
[2] Allocation for all medical schools.

While there has been a slight increase in scholarship funds (5.2–7.0 million dollars), loan funds have been slashed by more than 50%. The future decrease in loan funds in the proposed budget for 1970–1971 is based on the assumption that scholarships and loans will go to students from families with gross incomes below $10,000. The government expects that students from higher income families will take advantage of the federal guaranteed loan program. Our experience, and that of most medical schools, with the latter program has not been good. Only a few banks are prepared to provide loans under this scheme.

Table II shows the effect of reduction in federal money on financial aid available to Wayne medical students. For the year 1968–1969 we received $364,727 while the funding for 1969–1970 was $245,368, a 33% reduction. Total resources for 1969–1970 were more than $100,000 short compared with funds available for 1968–1969. This reduction coincided with an increase in total medical student enrollment at Wayne and the largest single increase in tuition in the school's history.

TABLE II.—FINANCIAL AID FOR MEDICAL STUDENTS

	1966–67	1967–68	1968–69	1969–70	1970–71
Health professions loans	$365,000	$289,301	$282,927	$133,968	$81,409
			[1] ($28,292)	[1] ($13,968)	[1] ($8,140)
Health professions scholarships	22,000	50,143	81,800	111,400	85,000
Total	387,000	339,444	364,727	245,368	174,549
Graduate professional scholarship [2]	NA	NA	16,150	26,500	36,000
Private	NA	NA	NA	9,935	9,980
Total	387,000	339,444	380,877	281,803	220,529
Student enrollment	517	537	530	548	575
Tuition, resident	$750	$750	$850	[3] $1,150	$1,150
Nonresident	$1,500	$1,500	$1,750	$2,350	$2,350

[1] University contribution.
[2] Wayne State University sponsored.
[3] National average for State supported medical schools $687—Wayne's tuition is 2d highest in United States for this category.

LOCAL FACTORS

1. Tuition increase

Tuition has increased markedly at Wayne Medical School over the past few years. In 1967–68 residents of Michigan paid $750 annually while non-resident students paid $1,500. Tuition now amounts to $1,150 for residents and $2,350 for non-residents.

Tuition for residents for 1969–1970 was the second highest nationally for state-supported medical schools (see Table III). Not only is there lower tuition at the other medical schools, but many have provided students with free microscopes or microscopes for rental. (Microscopes for rent will be available at Wayne for the first time for 1971–1972).

TABLE III.—YEARLY TUITION IN STATE-SUPPORTED UNIVERSITIES WITH MEDICAL SCHOOLS

	Medical school [1]		Undergraduate school [2]	
	Resident	Non-resident	Resident	Non-resident
Highest	[3] 1,225	2,350	1,035	1,877
Lowest	200	206	202	232
Average	687	1,409	357	920
Wayne	1,150	2,350	310	750

[1] Medical College Admissions Requirements 1969–70; AAMC.
[2] Comparative Guide to American Colleges 1968–69; James Cassand Max Birnbaum.
[3] University of Louisville.

2. Increased enrollment of students from low income families

a. Enrollment of black students increased significantly for the year 1969–1970. Nearly all of these students have little or no financial resources of their own and must depend on financial assistance provided by the school. Furthermore, the number of black students will increase each year.

b. Wayne State University is an urban university in a working class city and many of our students come from lower income families.

3. Cost of living increase

Cost of living increased 6% for the U.S. over the past year, but 6.4% for the City of Detroit. Nearly all of our students live in Detroit while at school and thus suffer the consequences of this inflation. Special items that hit our students harder than at many other schools are:

a. Lack of housing: There is no university dormitory or housing available.

b. Transportation needs: Nearly every medical student needs an automobile to commute to school, and for travel to various city hospitals for clinical education. This age group of students is particularly hard hit by high insurance rates.

PROJECTION OF FINANCIAL NEEDS

The projection of needs is based on experience of the past year. For the year 1969–1970, 311 (or 57%) of a student body of 548 applied for financial aid and 250 (or 50%) were awarded funds. More students merited support but could not be funded, while in most instances funds awarded to students were short of need.

a. Black students: Enrollment of black students for 1970–1971 is 39 (an increase of 16). Average financial support required for each student is $2,000—total $78,000.

b. Support for all students: The average support per student for 1969–1970 was $514. ($282,000 per 548 students). Using this inadequate figure as a baseline for 1970–1971, we need $291,000 for 566 students. However, additional funds of $58,000 are needed for black students ($78,000—20,000 $514 per student x 39).

Funding from Federal Health Programs for 1970–1971 is $166,409 for 566 students. Thus, additional funds of $183,000 are urgently needed.

THE UNIVERSITY OF MICHIGAN MEDICAL SCHOOL,
Ann Arbor, Mich., September 10, 1970.

Hon. PHILIP A. HART,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: The Health Professions Scholarship and Loan allocation to The University of Michigan Medical School was drastically reduced again this year. The situation is much worse than when I wrote you in March, 1969. This is to request your assistance in conveying our plight to Congress and urging strong support for the fullest possible funding of the program.

The President's 1970 Fiscal Budget proposed the following Health Professions Scholarship and Loan allocation:

	Loans		Scholarships	
	All schools	Medical schools	All schools	Medical schools
Number of participating schools	253	102	269	102
Enrollment in participating schools	79,520	38,240	84,000	38,240
Number of students assisted	10,502	5,191	17,666	7,484
Percent of students assisted	13	14	21	20
Amount requested	$43,381,803	$23,448,899	$17,549,751	$8,091,320
Amount allocated	$12,000,000	$6,339,000	$15,000,000	$6,828,000
Percent of request funded	27.7	27.0	85.4	84.3
Per capita allocation	151	166	179	179

The University of Michigan Medical School's actual 1970–71 Health Profession allocation compares as follows:

	Loans	Scholarships
Enrollment	845	845
Amount requested	$808,002	$169,000
Amount received	$126,691	$145,855
Percent of request funded	15.6	86.3
Per capita allocation	$149.93	$172.60

The University of Michigan Medical School expected to share in this retrenchment, but we are extremely distressed that we were awarded 11.4% *less* than the average 27% of loan requests funded for all medical schools.

Our enrollment has increased (from 809 in March 1969, when we last wrote, to 845) in an effort to meet the national demand for more physicians. More of our students than ever before come from disadvantaged backgrounds. Sixty-three of 125 first-year students requesting financial assistance came from families whose income was less than $10,000. Forty-seven such students entered last year and now are in their second year of studies. In the face of rising tuition and living costs, more students need more dollars than ever before. Guaranteed Loans do not help bridge the gap, not only because the $1,500 limit per person per year is unrealistic, but also because most banks will not participate in that program.

This may well be the first year in the recent history of the University of Michigan Medical School when a student may have to drop out of Medical School because of lack of funds. Should that happen, there will be one fewer medical doctor to provide health care for a growing nation.

We are deeply concerned that inadequate funds for students may jeopardize our achieving the goal of providing more health manpower for the nation. It is indeed deplorable if the Federal Government is unwilling to invest in the very product they say is desired for the people of the United States. It is especially untenable when such an investment is in the form of repayable loans.

We hope you will carry our message to Congress.

Sincerely yours,
ROBERT A. GREEN, M.D.,
Associate Dean for Student Affairs.

THE PRESIDENT'S REPORT, COMMISSION ON OBSCENITY AND PORNOGRAPHY

Mr. DODD. Mr. President, during the past few hours, the report of the President's Commission on Obscenity and Pornography has been released to the public.

The contents of the report, of course, are not entirely new; a preliminary report was leaked to the news media less than 2 months ago and caused a considerable uproar among the public and Members of Congress; indeed, there was some indication that the preliminary findings of the Commission were repudiated by the President himself.

To be sure, the findings of the earlier draft report have been considerably toned down in the final report before the public today.

The draft report boldly said that "pornography does not have any ascertainable causal relationship with crime, juvenile delinquency, deviancy, or disturbance."

This conclusion was reduced in the final report to read that extensive investigation "finds no evidence of such a relationship."

Although the change in the conclusion is slight, it seems curious that it was made at all.

Did the Commission find new evidence to soften its conclusion?

Did it give way to the popular outrage caused by the preliminary report?

Was the Commission upset about the President's reaction to its findings?

Whatever the answer, the report before us indicates that it was by no means as scientifically arrived at as the Commission insists.

If the Commission indeed did find new evidence to soften its conclusion, then it follows that it did not explore all the scientific evidence that, with thorough research, was available before it made its preliminary or final reports.

If the Commission gave way to popular outrage over its first report, then its entire conclusion must be dismissed as scientifically invalid.

And if it was upset about the President's initial reaction, and changed its findings, then the report is totally useless: if it was valid, the Commission would stand behind it no matter what public or Presidential reaction is.

But, of course, the Commission's report may not have any scientific validity at all.

Witnesses before our Juvenile Delinquency Subcommittee said it consisted of hearsay, slipshod "investigations," palpably false "evidence," and unwarranted conclusions.

There are such gems as the suggestion that sex crimes in Denmark have dropped by 31 percent since they opened the floodgates of pornography last year.

In fact, that 31-percent reduction is due to the fact that vast numbers of crimes, such as pandering and the like, are no longer crimes, so obviously there is a reduction of crime statistics just as there would be here if we omitted larceny as a punishable offense.

The most clearcut evidence about the sometimes slipshod, sometimes questionable, and sometimes unscientific procedures of the Commission has come from a witness who appeared before the Juvenile Delinquency Subcommittee just a week ago.

Dr. Victor B. Cline, a professor in the department of psychology, University of Utah, adduced massive evidence last week about some of the unreliable and unscientific methods adopted by the Commission and its investigators.

Indeed, the Commission's report is so grossly inadequate and distorted in his opinion that one cannot help suspect that it was written with a predetermined conclusion in mind.

I ask unanimous consent that Dr. Cline's statement be printed in the RECORD because I believe it is of supreme importance for Senators to be aware of it when they evaluate the Commission's findings which, no doubt, will play an important part in the legislation under consideration by Congress.

Lest the Commission's report misguide

Congress and the American people, we should be very careful to see it in its proper light.

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

TESTIMONY OF DR. VICTOR B. CLINE[1]

1. INTRODUCTION

By way of introduction it would probably be wise and appropriate to indicate how and why I am here today critiquing the Final Report of the Commission on Obscenity and Pornography.

I find myself in the awkward and difficult position of being asked to review and evaluate a report which as yet is unpublished or officially released. However, an early draft of the "Effects Panel Report," the heart of the whole study, was unofficially released in early August to the media with great attendant publicity and with at least one major newspaper printing the text verbatim. In addition, some members of the Pornography Commission staff have been giving frequent interviews to the press citing research results, Commission Report recommendations, etc. Also some of the research has been reported in open scientific meetings with attendant press coverage and review. So a critique at this time may not be too inappropriate.

For some years, as a professor of psychology, I have been keeping a literature file relative to the "effects of pornography on behavior" and related issues, and have over this time participated in an occasional symposium or made presentations relative to the pornography issue.

On May fourth of this year I testified before the Presidential Commission on Obscenity and Pornography at their Los Angeles hearings—reviewing some of the literature on the subject, as well as such related issues as porno-violence, the "satiation theory," limitations of some of the published research, and so forth. One of the recommendations made to the Commission on May fourth was that a panel of independent and unbiased social scientists be allowed to review their research and the conclusions which might legitimately be drawn from them. It was general knowledge at this time that the Commission was sharply divided ideologically with charges and counter charges of bias and vested interest imputed to some of its members. The specific text of the May fourth recommendation is quoted below:

"I would respectfully suggest to the Commission that with regards to the various research projects which they have contracted out, that a panel of social scientists, experts on human research, carefully evaluate the research results and especially the kinds of conclusions which might be drawn from them. If this, or something like this is not done, the Commission could run considerable risks when the Final Report comes out. If even only several of the commissioned studies are badly flawed methodologically and incorrect inferences were drawn from the, there could exist the strong possibility of attack and criticism by the scientific community which might result in a casting of doubt on the validity of all of the studies, which would greatly lessen the impact of the whole report. But probably the important issue is in the interest of truth. The issue of pornography and its dissemination is very emotionally loaded for those on both sides of the fence. We have witnessed in the recent past a real abuse of statistics and studies about pornography which are little more than myths, but passed on and thought of as valid sometimes by the most reputable of professional personnel."

On about July 27 one of the minority members of the Commission sent to me a copy of the first draft of the "Effects Panel Report" asking for comment on its scientific merit, accuracy, etc. This report was gone over with some care. It was possible to compare some of its discussions and conclusions against some of the research it was based on which was available in the open scientific literature. However, my critique was limited by the fact that none of the Commission sponsored and financed studies (all unpublished) were available for review and cross checking. Despite this limitation there was sufficient research available in the open literature, such as that of the Kinsey Institute on sex offenders, social indicator data on sex crimes statistics, etc., to obtain a fairly good idea of what they were doing with their data. This critique and analysis revealed many very serious flaws in this report as well as instances of not reporting data and findings contrary to the Commission majority point of view. These opinions and quite critical comments by this speaker were expressed in the letter sent to this Commission member. Several days later the "Effects Panel Report" was leaked to the press with great attendant publicity about how empirical research had demonstrated pornography "harmless." Quite concerned, I sent a letter to every member of the Commission including its chairman, repeating my critical evaluation of the scientific basis of portions of this report. Point by point documentation was given. Again a recommendation was made that an independent panel of behavioral scientists be allowed to review all of the research to determine what conclusions might be legitimately drawn from their data. As my letter to each Commission member expressed it:

"If what your hired professional staff has written and prepared is true, scientific, valid, and without major flaws, then they should welcome a careful, thorough evaluation of what they have done by those peers having high competence and professional ability. Since this Commission's report undoubtedly will have a profound effect on legislation before Congress, the judiciary, educators, the media, ministers and even parents, a flawed report being issued under the Commission's imprimatur would represent a major dereliction of responsibility as well as contributing even further to the tensions and conflicts which beset our society. This is especially so now since in my view this report has limited credibility and is certain to be vigorously attacked by knowledgeable critics, as well as others. . . . If you really are interested in ascertaining the truth about pornography's potential harm or non-harm, I see that you have little to lose by such an endeavor."[2]

I also requested access to the original Commission studies for evaluation and review. None of these requests were honored.

Shortly after this I was asked to testify before the House Postal Operations Subcommittee about my critique of the Commission's "Effects Panel Report", which somehow they had heard about. This I did, on August 11, giving lengthy documentation to the serious flaws in the Commission report and for the third time, now publicly, urging the Commission to allow a panel of unbiased independent behavioral scientists to evaluate their research and their conclusions drawn from it. Once again, the Commission did not respond to this suggestion.

About a week following my testifying before the House Subcommittee, Father Morton Hill, a member of the Commission minority group, phoned me indicating that he had in his possession some copies of the Commission's original research reports which up to this time had been kept confidential and unavailable to anyone outside of the Commission. He mentioned that some 85 studies and research projects had been contracted out by the Commission. I agreed to come to his New York office and evaluate these studies if he could obtain copies of all of them for me to review. This he agreed to do, but was unable to secure them only with the greatest difficulty. The Commission staff most reluctantly released the last of these research documents, which were vital in the writing of the minority report, only hours before the final deadline for submission of this report in early September.

During August and early September the speaker spent 14 days in New York going through all of the Commissions research reports bearing on the "effects" question.

This involved first going through and evaluating each research, its strong points and its limitations, and determining whether its conclusions were valid and backed up by the data and proper methodology. While all of the research projects had their limitations, some were done with great skill and represent important contributions to the scientific literature. Others were very badly flawed in various ways which meant the results were inconclusive or of little value, and therefore that few legitimate conclusions or generalizations could be made about them. Following this the speaker went through the final version of the "Effects Panel Report" and the other Commission reports to check what conclusions they had reached in their review of the scientific literature, noting the references they cited. Then I went back to the individual research documents to cross check the adequacy of their conclusions, if the research was valid, etc. The results of this analysis will be reviewed here today. Because, of time limitations, this will necessarily be condensed and some lengthy commentaries omitted.

Several very important considerations should be noted before we proceed further. The Commission-sponsored research ran into many thousands of pages, some ten volumes of material, highly technical in nature. And with the addition of the outside scientific literature also comprising many thousands of pages, most commission members did not have the time[3] nor expertise to read or

[1] Dr. Cline is currently a professor in the Department of Psychology, University of Utah, where he teaches courses in experimental, clinical and child psychology. He has been with the University of Utah since 1957. Prior to this he was a Research Scientist with the George Washington University's Human Resources Research Office engaged in a broad variety of human factors research. He has been a practicing clinical psychologist engaging in psychodiagnostics and psychotherapy for some 15 years. He is also the author of over thirty published research papers, principal investigator on a number of research projects funded by the National Institutes of Health, Office of Education, Office of Naval Research, etc. He is the Program Director of the Southern Utah Guidance Clinic (a traveling mental health clinic) and consultant to various government agencies, industrial firms, etc.

[2] Since the occasion of this critical review of their first "Effects Panel Report", their report has been almost totally rewritten twice, though still coming to the same conclusions (e.g., no evidence that pornography is "harmful"). These later versions have tended to be more modest, cautious, have used more correct and up to date data, and represent in many ways a more adequate review of the literature, though still possessing shortcomings, to be discussed later in this paper.

[3] None of the Commissioners lived in the Washington, D.C. area where the Commission Headquarters, Research Reports, and staff were located. It took this speaker 14 very long days to go through just the Commission studies. It is unlikely that many Commission members, who continued in their regular employment, coming to Washington for occasional meetings, had the opportunity to systematically review all of the original research documents.

evaluate all of this. Chairman Lockhart, a law professor, has even indicated not reading all of his own Commission's studies. This has meant that a small professional staff, hired full time, have done most of the work of reading and evaluating this material and writing up the scientific results and interpreting it to the Commission. And while the Commission members on the Effects Panel include men with training in the social sciences, if their biases and attitudes toward pornography were similar to that of the professional staff, this could conceivably result in a report slanted to a particular point of view.

In any event, this means that most of the Commission members, who are non-scientists and untrained in statistics and the techniques of research methodology are at the "mercy", in a sense, of the small professional staff and the scientifically trained members of the Effects Panel. If their interpretations of the research data are in error there is no way the other Commission members would ever know this, including Chairman Lockhart. *Since the basis of all recommendations made by the Commission derive in whole or part from the "empirical scientific evidence"*, if this evidence has been slanted, tampered with, etc., it then calls into question the basis for many of their conclusions and of course the credibility of the entire Commission Report.

2. OVERVIEW OF PROBLEM

There are at least two reasons for the existence of laws regulating and controlling the traffic in obscene and pornographic materials. The *first* has to do with potential harmful or adverse effects such materials may have on the user, child or adult (e.g., corrupt ones morals, deprave, feed a neurosis, awaken and provoke the sex appetite in an unstable individual who might thereby sexually harm or molest another, etc.). The *second* involved an "offense to public morality or taste." Examples might include prostitution, public exposure and nudity, etc., the control of which has its basis in the Judeo-Christian values from which our national culture and heritage is derived.

The majority report of the Commission on Obscenity and Pornography has made recommendations which essentially involve repeal of all laws restricting the distribution, sale or exhibition of any kind of pornography[4] to adults and the same for non-pictorial pornography for children.

However, whenever sweeping changes in social policy, laws, regulations, etc. (such as this) are recommended which might affect the health and welfare of the nation's citizens (which their own and other surveys suggest a significant proportion of the population believe to be the case), the burden of proof for demonstrating "no harm" or "no adverse results" is ordinarily thought to be on the shoulders of the innovators or "changers."

Thus our task here will be to look carefully at the research presented and see if "no harm" has been adequately demonstrated. The issue of pornography being "an offense to public morality and taste" which involves values will not be an issue in this discussion.

3. THE PROPER STUDY

The Commission in the summary of their Effects Panel Report conclude:

"In sum, the empirical research has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults. The Commission cannot conclude that exposure to erotic materials is a factor in the causation of sex crime or sex delinquency."

[4] They would approve control of unsolicited mailed advertisements for pornography and certain open displays of same.

Based on the above paragraph, cited again and again in various forms throughout the whole report, we have the basis for recommending the removal of all pornography controls for adults and all controls (except pictorial pornography) for children.[5]

Yet if we review the research of Propper, in his study of 476 reformatory inmates (see Table 1) we noted again and again a relationship between high exposure to pornography and "sexually promiscuous" and deviant behavior at very early ages, as well as affiliation with groups high in criminal activity and sex deviancy. This study was financed and contracted by the Commission, and while they refer to Propper's study often, no mention is made of any of these specific results in the Commission Report. This study was for many months in the hands of the professional committee that assembled and wrote the report as well as available for inspection of any of the Commission members who wished to read it (but no one else). As the reader can scarcely fail to note, there are striking statistical relationships between heavy use of pornography and various kinds of sexual "acting out," deviancy, and affiliation with high crime risk groups.

4. THE DAVIS AND BRAUCHT RESEARCH

Davis and Braucht (1970) in a study of seven different populations of subjects comprising 365 people assessed the relationship between exposure to pornography and moral character, deviance in the home, neighborhood, sex behavior, etc. Samples of city jail inmates, Mexican-American college students, black college students, white fraternity men, conservative protestant students and Catholic seminarians were studied intensively. In addition each had one female friend fill out a character scale about their behavior.

TABLE 1.—"EXPOSURE TO SEXUALLY ORIENTED MATERIALS AMONG YOUNG MALE PRISON OFFENDERS" (1970)

(By Martin Propper)

[Sample: 476 male reformatory inmates, ages 16 to 21]

Activity engaged in	Percent: Subjects having low exposure to pornography	Percent: Subjects having higher exposure to pornography	Source
1. Age of 1st intercourse 11 or under.	37	53	Table 31.
2. Age of 1st intercourse 14 or under.	65	86	Do.
3. Having sex intercourse 3 or more times a week prior to incarceration.	28	45	Table 29.
4. Having intercourse with 7 or more partners.	63	96	Table 28.
5. Intercourse with more than 1 person at a time.	35	59	Page 68.
6. Engaged in passive mouth sex organ contact (sometimes or frequently).	27	56	Table 34.
7. Engaged in active mouth sex organ contact (sometimes or frequently).	16	49	Table 33.
8. No homosexual experience.	53	37	Page 66.
9. Several times to frequently did anal intercourse.	20	40	Table 35
10. Belongs to a high sex deviant peer group.[1]	44	78	Table 36, page 72.
11. Belongs to high anti-social crime group.[2]	55	82	Table 37, page 73.
	Seeing textual depictions of homosexual activity		
	Never (percent)	10 or more times (percent)	
12. Participation in homosexual activity 1 or more times	12	40	
13. Table 32 in the Propper study also reveals among the younger age boys a very high relationship between (a) the age at which they saw a picture of sexual intercourse and (b) the age at which they first engaged personally in sexual intercourse. This means that if a boy saw pictures of intercourse at a very early age he engaged in intercourse at a very early age. If he saw intercourse pictures later he engaged in intercourse later. While the data do not provide evidence of causal linkage it certainly raises the possibility. It also reminds one of Bandura's work in "imitative learning" where children learn by imitating what they've seen			

[1] The sex behaviors which constituted this measure included: (a) sex intercourse, (b) gang bangs, (c) going to a whore, (d) getting a girl pregnant, (e) participating in orgies.

[2] The activities which constituted this measure included: (a) friends, suggestions to violate the law, (b) friends in jail or reform school, (c) friends in trouble with the law, (d) purchase of stolen goods by friends, and (e) friends who were members of gangs.

In their study, which was impressive in its rigorous methodology and statistical treatment, they state, *"One finds exposure to pornography is the strongest predictor of sexual deviance among the early age of exposure subjects* [p. 35]." Later they again note, *"In general, then, exposure to pornography in the 'early age of exposure' subgroup was related to a variety of precocious heterosexual and deviant sexual behaviors* [p. 36]." They note that since exposure in this subgroup is NOT related to having deviant peers (bad associations and companions) and similar type variables, it would be difficult to blame the sexual promiscuity and deviancy of these subjects on other influences such as being influenced by friends (rather than pornography) into these kinds of anti-social activities.

It should be noted that this research was contracted and financed by the Commission, was in the hands of the Commission staff for many months, is referred to many times in their report—but not a single mention is made of these negative finds. In fact, the September 3 issue of *The New York Daily News* and an earlier edition of the *Washington Post* carried stories on their research linking exposure to pornography with sex deviancy. This is a particularly important finding in that it suggests real dangers in exposing children and young adolescents to heavy quantities of pornography, the strong implication being that pornography can affect and stimulate precocious heterosexual activity and deviant sex behavior (homosexuality). Obviously more research must be done here, but like with the early studies linking smoking with lung cancer, it would seem most irresponsible not to report such findings and especially in the Commission's Effects Panel Report when so few people have access to the original research, and where publication in the scientific literature would be at least one or two years in the future.

5. THE BERGER RESEARCH

Alan Berger and associates in Illinois had contracts with the Commission to do two

[5] Control of unsolicited mail order pornography and open public displays are recommended.

studies. In one they surveyed 473 adolescents primarily in the age range of 14–18 (from working class backgrounds) with an extensive questionnaire which asked questions about their exposure to pornography, their sexual behavior, etc. In the second study 1177 college students were interviewed about similar issues. In carefully reviewing these findings it is once again distressing to note that those data "not favorable" to the majority point of view are either played down or not mentioned.

The two most significant (highest) relationships (between independent variables) were between having been exposed to large amounts of pornography and engaging in high levels of sexual activity. This was true for both high school students (gamma .394 [males] page 48) and college age subjects (gamma .380, page 62). These relationships are lower (but still significant) for women. An example of this relationship can be seen in Table 2 below.

TABLE 2

	Amount of pornography exposed to student	Percent college males engaging in sex, intercourse, etc
High	5-6	77
	4	62
	3	60
	2	44
Low	1	4

There are also substantial relationships between exposure to pornography (high) and grades (low), especially in high school, but also college for males (gammas of —.256, page 30; and —.216, page 67). The relationship between these two in college declines when one controls out the influence of high school grades, but still remains true for the top college men academically (who have low pornography exposure indices).

In their study of the 473 high school students they found a relationship between frequency of seeing movies depicting sexual intercourse and the adolescent engaging in intercourse (their Table 46, page 101, is duplicated in part below).

TABLE 3

	Frequency of adolescents seeing movies depicting sex intercouse			
	Not at all	1 to 4 times	5 to 10 times	11 or more times
Percent of males engaging in premarital intercourse	53	62	73	88
Percent of females engaging in premarital intercourse	10	29	44	

The above data are in the Commission financed reports, but are not discussed or presented, despite the fact that they have an important bearing on the "effects" question.

And while it is recognized that there are some people in our society with more libertarian views who would not be concerned if pornography did "cause" more young people to engage in premarital intercourse, there are still others, including many parents, who would be concerned and would wish to be so informed. The Commission Report fails in fully informing its readers about such associations or linkages as noted above.

6. THE MOSHER AND KATZ STUDY

In another Commission sponsored study by Mosher and Katz (1970) studying male aggression against women in a laboratory setting, they concluded (page 25) that, "The data clearly support the proposition that aggression against women increases when that aggression is instrumental to securing sexual stimulation (through seeing pornography)." This finding was particularly true for men with severe conscience systems as well as for those feeling guilt about being aggressive. This suggests that the need for sexual stimulation (via pornography) can overrule conscience and guilt in "permitting" aggressive behavior towards women. And while this is only a laboratory demonstration, with many limitations, it still constitutes another "negative effects" type of evidence in which virtually no attention is paid by the writers of the Commission report.

7. THE GOLDSTEIN STUDY

In another Commission financed research project by Goldstein (1970)[6] a study was made of the exposure to pornography and its relationship to sex activities of groups of sex offenders and others. In all, nine separate groups of male subjects were studied and compared. They found that the rapists were the group reporting the highest "excitation to masturbation" rates by pornography both in the adult (80%) as well as teen (90%) years. Considering the crime they were imprisoned for, this suggests that pornography (with acompanying masturbation) did not serve adequately as a catharsis, prevent a sex crime or "keep them off the streets." Fifty-five percent of the rapists report being "excited to sex relations by pornography." When reporting on "peak experiences" in exposure to pornography during their teens, 80% of the rapists report "wishing to try the act" that they had witnessed or seen demonstrated in the pornography exposed to them. This is far higher than with any other group. When asked if in fact they did follow through with such sexual activity immediately or shortly thereafter 30% of the rapists replied "yes." An even higher number of blacks (38% replied "yes") which is consistent with many studies showing very high rates of sexual activity early in life for this group. Even among the "normal" controls 28% replied "yes." If we can accept what they say at face value, this would suggest that pornography potentially does affect behavior and possibly adversely. This would also suggest serious concerns about exposing young people, especially to thematic material involving pornographic-violence. Since the writers of the Commission Report base most of their findings on data using "verbal self report" there is little reason not to at least consider as partially valid what these people say about pornography and its influence in their lives. When one asks them about their adult years and to what extent they "tried out behaviorally" what pornography had suggested to them, the figures drop somewhat (15% for rapists, 25% for child molesters, etc.) but still suggest an "effect."

8. THE OPINIONS OF PROFESSIONAL WORKERS ABOUT PORNOGRAPHY

In their summary section the Commission states, "Professional workers in the area of human conduct generally believe that sexual materials do not have harmful effects." While this appears to be true these conclusions are based on a mail-back survey in which only a third of their sample responded. They also neglect to state that in this study 254 psychiatrists and psychologists had cases where they reported they had seen/found a direct causal linkage between involvement with pornography and a sex crime. While another 324 professionals reported seeing cases where such a relationship was suspected, this totals in actual numbers 578. While these therapists represent a minority group percentagewise, it would seem to this reviewer irresponsible to gloss over them as if they didn't exist. What if 900 of 1000 physicians indicated that they had observed no relationship between cancer of the cervix and use of the coil contraceptive, but the other 100 physicians indicated that in their practice they had come across cases where there was a suspected or definite relationship. Do we discount the experience of the minority because they are outvoted where a possible health hazard is involved?

Additionally they do not report (though they were aware of its existence) of another survey conducted by a religious group, the Archdiocese of New Jersey, in 1967 of professionals seeing a relationship between involvement with pornography and anti-social sex behavior. The majority of therapists here reported noting such a relationship at some time during their practice. This study is also flawed because of a low return of "mail-backs" by the professionals. But such is also true of the Lipkin and Carns study. Such omission of contrary evidence is difficult to understand.

9. SEX OFFENDERS REPORT PORNOGRAPHY CONTRIBUTED TO THEIR CRIME

In another Commission sponsored study by Walker (1970) seven groups of adult males (sex offenders, mental hospital patients, university students, etc.) were tested and interviewed relative to exposure to pornography and a great deal of personal background data. In their analysis of the data they found that the sex offenders significantly, more often than their controls (non-sex offenders who they were compared with), increased their sexual activity after viewing pornography. A significant minority (39%) of the sex offenders indicated that "pornography had something to do with their committing the sex offense they were convicted of." The researchers also found that their offenders significantly more often claimed that they had been influenced by pornography to commit a sexual crime.

The writers of the Commission Report note this evidence and rightly raise the possibility that these sex offenders may be "scapegoating" here (blaming something or somebody else for their problem). This possibility is certainly a reasonable one. The alternate possibility, that they might indeed be telling the truth, however, *is* another reasonable alternative. And until this issue is settled it would seem most injudicious and unwise to claim that pornography has "no effects" or that "no effects" can be demonstrated which would constitute the basis for major social change, repeal of laws, etc.

10. THREE EXAMPLES OF IMPROPER REPORTING OF RESEARCH DATA

(a) The Berninghausen and Faunce Study.
(b) The Kutschinsky Study.
(c) The Walker Research.

(a) *The Berninghausen and Faunce Study*

In Chapter V of the Effects Panel Report, the Commission states:

"A comparison study of thirty-nine delinquents and thirty-nine non-delinquent youth (Berninghausen & Faunce, 1964) found no significant differences between these groups in the number of "sensational" (obscene) books they had read. Non-delinquent youth were somewhat more likely (75%) than delinquent youth (56%) however, to report having read at least one 'possibly erotic' book."

But what the Commission doesn't tell the reader is that:

(a) a significantly greater number of delinquent boys (than non-delinquent) had read two or more adult books (with erotic content); and a significantly greater number of delinquents had read three or more "erotic books" than the non-delinquents.

(b) the authors of the research concluded that "limitations of the study precluded having any great confidence in the stability of the conclusion" meaning the findings are unreliable and probably shouldn't be cited.

[6] Table 9–10.

The writers of the Commission Report make three errors:

(a) They cite data to prove a point from a "worthless" study.

(b) They don't tell the reader that the study is flawed.

(c) They present only that evidence which favors their point of view. They again fail to cite contrary findings.

Since most readers will never read the original study they are "at the mercy" of the writers of this report to present complete and honest data. Once again we see an example of where this did not occur.

(b) *The Kutschinsky study*

In the final "Effects Panel Report" the Commission staff writes:

"A survey (Kutschinsky, 1970) of Copenhagen residents found that neither public attitudes about sex crimes nor willingness to report such crimes had changed sufficiently to account for the substantial decrease in sex offenses between 1958 and 1969."

In the Final Report summary section they put it even more strongly:

"Other research showed that the decreases in reported sexual offenses cannot be attributed to concurrent changes in the social and legal definitions of sex crimes or in public attitudes toward reporting such crimes to the police. . . ."

The average reader and most social scientists will never get an opportunity to see what this Danish psychologist actually wrote in this report or what he did. He, of course, was studying the issue of why with increasing pornography in Denmark has the rate of sex crimes apparently dropped. Maybe pornography has a "therapeutic effect" on sex criminals. What Kutschinsky did, in fact, was intensively interview a carefully drawn sample of adult men and women throughout Copenhagen surveying (a) whether they had ever been a victim in a sex crime, (b) did they report it, (c) would they report certain types of sex crimes now (or ignore them), (d) have they changed their minds over the past few years about the seriousness of certain sex offenses, and (e) how did they feel about these same things ten years ago. He found that 26% of the men[7] and 61% of the women of Copenhagen had been victims of some category of sex crime (some minor, some serious). However, only 6% of the males interviewed and 19% of the female victims reported it to the police. This is consistent with statements made by the U.S. Department of Justice in their 1970 Unified Crime Reports referring to rape. "This offense is probably one of the most under reported crimes due primarily to fear and/or embarrassment on the part of the victims." This means overall that sex crimes statistics are very "shaky" and have to be viewed with caution simply because most are probably never reported.

Kutschinsky concludes after a careful and extended analysis of his data that, *"The decrease in (sexual) exhibitionism registered by the police during the last ten years may be fully explained by a change in people's attitudes toward this crime and towards reporting it to the police."* He concludes in about the same terms with regards to the sex crime of *"indecency towards women"* (which can involve anything short of a direct rape attempt on a female). If the reader will go back and read again what the Commission said about the Kutschinsky findings, we again get an example of critical omissions and misrepresentations of important factual data.[8]

The Commission's presentation of the Denmark sex crimes data omits certain types of sex offenses such as incest (apparently unavailable) which many people would regard as fairly serious. If as Kutschinsky's study suggests, there have been no real declines in sex crimes in certain categories, only a change in people's conception about their seriousness and a lessened inclination to report them, this should be given thoughtful and careful consideration. That the Danish people have liberal sex attitudes has been documented by various surveys including another by Kutschinsky which indicated that only thirty-two percent of Danes regard sex intercourse with a "consenting" fourteen year old as a crime and only twelve percent would regard the rape of a female as a crime where she permitted the rapist to engage in prior petting.

The kind of sex crime most people would be concerned with would involve a personal assault as in rape, or on a child, or the situation involving exhibitionism which might "traumatize" some women and possible affect their psychosexual feelings and attitudes negatively.

If we look at the Copenhagen rape statistics (combining, rape, rape with robbery, attempted rape, and intercourse on threat of violence) which all involve a sexual assault on another—we get the following picture.

Year	Rape (all categories)
1958	[1] 57
1959	55
1960	37
1961	48
1962	53
1963	50
1964	39
1965	[2] 42
1966	70
1967	44
1968	50
1969	35

[1] Cases.
[2] Pornography freely available.

If one looks at the table and notes that it was about 1965 when pornography became generally available (even though legal recognition of this wasn't to come for several years). It presents a rather puzzling picture in that until 1969 there were no major changes in rape rate other than the normal fluctuations common to preceding years. In any event it would certainly be injudicious to conclude that there has occurred a true change or decline in some sex crimes, at least yet, in the light of the above statistics or in view of Kutschinsky's findings that with certain sorts of sex offenses the "decline" can be partially or fully attributable to changes in people's attitudes about certain sex crimes and their changes in "reporting" practices. Other sorts of data which would be useful to have in studying this whole problem would be divorce rate figures for the past ten years, venereal disease rates, changes in extra-marital sex patterns, and prostitution figures for the decade.

(c) *The Walker research*

In Chapter V of the Effects Panel Report the Commission reviews the research of Walker (1970) studying sex offenders and non-offenders:

"The mean age of first exposure (to pornography) of the rapists was one half a year or more later than that of the matched non-sex-offenders in reference to eight of the fifteen items (types of pornography) and one half a year or more earlier in reference to two. The biggest difference between the groups occurred in relation to depictions of heterosexual intercourse for which non-sex-offenders had a mean age of first exposure of 14.95 and rapists a mean age of first exposure of 18.19."

The Commission blandly reports this as a fact when a quick look at Walker's tables shows that this is undoubtedly in error. The table below is produced directly from their data.

Type of pornography seen	Mean age when sex offenders first saw pornography (years of age)
Male-female sex intercourse	18.19
Humans having sex relations with animals	16.94
Mouth-sex organ contact	17.46
Homosexual activities	17.70

Type of pornography seen	Mean age when nonoffenders first saw pornography (years of age)
Male-female sex intercourse	14.95
Nude female with breasts exposed	15.09
Nude female showing sex organ or pubic hair	15.87
Nude males with sex organs	16.25
Nude or partially nude couple kissing	15.10

To claim that the non-sex offenders (see above) saw pictures of a male and female having intercourse 1.3 years *before* they first saw a picture of a male sex organ, or nude female with the breasts exposed, etc. demands a great deal of credulity from the reader. It likewise stretches the imagination for one to believe that the Sex Offender group witnessed pictures of animal-human intercourse, oral intercourse, and homosexual relations a year or less *before* ever seeing pictures of male-female intercourse. These data are obviously in error. And while it is not too difficult to imagine a single typographical error, we have two independent errors here both occurring in the same area. Common sense would have dictated a check on this. Both Walker and the Commission staff say nothing.

11. THE PURCHASES VS. CONSUMERS OF EROTICA

The Commission Report suggests that the primary purchasers of erotica appear to be well educated, middle class, males in their 30's and 40's. It should be noted that this is based on studies nearly all in downtown urban areas where a surveyor "guessed" at the age, socio-economic level, etc., of those he saw in "adult bookstores" and movies. Where interviews were conducted they consisted of approaching men as they emerged from an "adult movie" and having an "informal conversation over coffee" with them (no notes were taken until later). And of 270 people approached in the Winick study, only 100 agreed to "have coffee," creating sampling problems. When they tried to get people to fill out questionnaires (as in the Nawy study of the "San Francisco Marketplace") only 29 out of 150 bookshop customers cooperated, and 190 out of 800 movie patrons so obliged. This makes generalizing about these data extremely risky. Massey (1970) in his analysis of the Denver area concluded that the type of customer is related to the *location of the store* and *time of day*.

Probably the major issue is who *consumes* and *uses* pornography, not so much who buys it. Because for every purchaser of hard core materials there may be 10–100 viewers or users of the merchandise. In the Abelson National Survey of Youth and Adults we find that girls 15 to 20 see most pornography (for

[7] Involving primarily "homosexual molestation."

[8] With regards to "peeping" a non-violent sex crime which has declined 79.9% in the last decade his data suggest that the availability of all sorts of visual pornography, films and live sex shows probably have reduced the need of the peeper to risk arrest looking through people's windows when he can see more in any porno shop. We would agree with this conclusion. In the only other sex crime which he evaluated, "Indecency toward girls" his data suggested little or no change in public attitudes towards its seriousness or lack of willingness to report it. The decline in the reporting of this offense remains a puzzle, with Kutschinsky suggesting the possibility of pornography being a (poor) substitute for little girls for this type of offender.

females) and young men in the age range of 15 to 29 get the heaviest doses. Abelson found that more boys than adult men have seen visual pornography (87% vs. 80%) and more girls have seen this than adult females (80% vs. 53%). This means in sum that the heavy users and most highly exposed people to pornography are adolescent females (among women) and adolescent and young adult males (among men).

Though his samples are not random, in Nawy's study of the "San Francisco Marketplace" 70% of the patrons of erotica he surveyed attend sex movies once a month or more. He also found that 49% of these people were currently having sex with two or more partners in and out of their households and 25% had been having sex with 6 or more partners in the past year. Frequency of intercourse rates were very high for his sample, suggesting that erotica may have a "booster" or "accelerating" effect on sex activity. In any event, the data outside the laboratory where people are studied in their own environment, suggest that those interested in erotica or pornography consume it regularly and for "sexual" reasons. But this is suggestive only because of flawed sampling.

12. MISUSE OF QUESTIONNAIRE AND VERBAL SELF REPORT DATA

Nearly all of the studies presented in evidence relied heavily on "verbal self report" without outside verification. Caution must be exercised in interpreting these kind of data. A number of factors can make these data suspect: (a) The subjects may consciously falsify or distort (especially if the questions might "incriminate" or would require revealing damaging evidence against oneself—this might be particularly true for the prison sex offender inmates), (b) Questions in the sexual area in particular could lead to defensiveness, distortion, or "protective dishonesty" of response (such as having married couples, as in the Commission's Mann study (1970), check off in a daily diary (kept home) whether or not they had had an extramarital sexual experience the night before, and "Did you orally stimulate your partner's genitals to climax?" etc.), (c) The fact that it has been repeatedly demonstrated that slight changes in wording of a question can make major differences in the number of people who will respond 'yes' or agree. This was demonstrated in this study in a most dramatic fashion when in the commission sponsored national survey (by Abelson) only 23% of the males admitted that pornography sexually aroused them vs. 77% agreeing to this in the Kinsey studies. Similar differences were found for women (8% Abelson, 23% Kinsey). Who can you believe? Similar gross differences were found when asking people if they felt pornography should be controlled by legislation and laws. Not only is this true across several different studies but also across several questions within a single study.

Example: (Abelson, 1970) 88% of a national sample would prohibit sex scenes in movies that were put in for entertainment; but only 50% say that no one should be admitted to movies depicting sexual intercourse.

The problem with the above example has to do with what question preceded the critical one (which may have established a certain "set" in answering it), or what alternatives were there available in answering; or confusion as to what you mean by a movie depicting sexual intercourse? It could mean a scene in which a couple are in bed together covered by blankets in which intercourse is only suggested or it might mean an explicit stag film. The Commission Report writers tend to treat "verbal report" as fact, and when there are discrepancies they consider as significant and present or emphasize that data which favor their point of view.

Example: Harris Poll (1969): 76% of U.S. wants pornographic literature outlawed.

Gallup Poll (1969): 85% of the U.S. favor stricter laws on pornography.

Abelson (1970): 2% of U.S. viewed pornography as a serious national problem. (A Commission Study)

However, when one looks at the question which Abelson in this Commission financed study asked U.S. citizens, it's not difficult to figure out why they got such a low percent: *"Would you please tell me what you think of the two or three most serious problems facing the country today?"* It is doubtful that even the most concerned citizen would list "pornography" as among the first two or three when the country is faced with the problems of war, racial conflict, youth rebellion, law and order disruption, drugs, pollution, etc. And as might be expected these head the list.

Thus when in recommending abolition of nearly all laws regulating pornography the Commission report justifies this by saying: *"A majority of the American people presently are of the view that adults should be legally able to read or see explicit sexual materials if they wish to do so."* They are basing this only on *some* of the responses of U.S. citizens to *Abelson's* survey but not other data from the *same* survey (e.g., 88% would prohibit putting sex scenes in movies that were put there for entertainment)[9] and of course are rejecting out-of-hand results of the Harris and Gallup polls (see above) who have been in business for several decades. This kind of manipulation of statistics and reporting of data is indefensible especially when most Americans or even social scientists will never have an opportunity to view the original data on which these recommendations are based.

13. THE ISSUE OF WHETHER SEX OFFENDERS COME FROM SEXUALLY DEPRIVED BACKGROUNDS

The Commission in their Effects Panel Report, and elsewhere again and again cite data to show that sex offenders come from conservative, repressed, sexually deprived backgrounds. Quotations from Chapter V, Effects Panel Report, capture well the essence of their conclusions:

"Sex offenders generally report sexually repressive family backgrounds, immature and inadequate sexual histories and rigid and conservative attitudes concerning sexuality."

Or another quote:

"The early social environment of sex offenders may be characterized as sexually repressive and deprived. Sex offenders frequently report family circumstances in which, for example, there is a low tolerance for nudity, or absence of sexual conversation, punitive or indifferent parental responses to children's sexual curiosity and interest. Sex offenders' histories reveal a succession of immature and impersonal sociosexual relationships, rigid sexual attitudes, and severally conservative behavior."

Or still another quote:

"Suggest that sex offenders' inexperience with erotic material is a reflection of their generally deprived sexual environment. The relative absence of such experience probably constitutes another indicator of atypical and inadequate sexual socialization."

There are a number of things very wrong about these conclusions. In some of the studies where they compare sex offenders and non-offenders they, inexcusably, lump all different types of offenders together "into one bag" (e.g., Cook & Fosen, and Johnson et al., 1970). The problem here, as the Kinsey Institute studies well demonstrate, is that there are at least 21 categories of sex offenders, who show striking differences in family, sexual and psychosocial backgrounds. To draw general conclusions about such a diverse group is like doing a study on what religious people are like and include in your group Catholics, Unitarians, Buddhists and Black Panthers, treating them as a single "type." For example aggressive rapists are very impulsive, having extremely high levels or sexual activity from an early age with very high degrees of criminality. They are very dangerous. The "peeper" on the other hand tends to have very low rates of sexual experience, tends not to marry and is poorly socialized and is an entirely different "breed of cat."

Another type of problem is the use of inadequate control groups or none at all. To illustrate how this might cause serious problems, consider the following: "Protestants are a more criminally inclined group of citizens than atheists." We study a group of protestants at the state prison and compare them with atheists taken from the general population, and sure enough our conclusion is correct. Or another (again made purposely absurd to illustrate the point), "Men who drink carrot juice will have a high sex drive" and we compare men 20–25 years of age who drink carrot juice with men age 90 and over who don't drink it, on a variable like frequency of intercourse. If we conclude this study shows that drinking carrot juice is related to or causes a "high sex drive," we are in error. It has demonstrated no such thing. If we report this and *also* fail to mention that we didn't have a comparable control or comparison group, or not mention that the controls exceeded 90 years of age, then we've made a second serious error.

One of the studies that the Commission cites as giving evidence that "sex offenders" come from sexually deprived backgrounds is that of Thorne and Haupt (1966). Six percent of their college students report True "I have never had a sexual orgasm" vs. almost 30% for the rapists. While they don't have a matched control group to compare the rapists to, they do have data on murderers and property crimes offenders who one might guess would tend to be more similar in social class background, intelligence and age to the rapists (than the college students). When we look at their responses to this question we find an amazing 40% who indicate never having had a sexual orgasm. Since by the very nature of their offense it would be difficult to believe that 30% of the rapist sample never had orgasm, and in view of the Kinsey findings that very nearly all of rapists (which they studied) engaged in premarital intercourse and nearly 80% engaged in extramarital sex after they married, these findings appear even more difficult to believe. However, if one is aware of the fact that most rapists, murderers, and property crimes felons who are convicted come from lower socio-economic backgrounds, have lesser education, etc. a very simple explanation offers itself. A significant number of these men didn't understand what the term "sexual orgasm" meant. Again, incorrect inferences are drawn from data.

Thus one can see the extreme importance of having matched control groups. If we use the murderers and property crimes felons as controls for the rapist sample (a risky thing to do) and compare how this typical sex offender group compares on sexual repression, deprivation, etc. we find that (because they are in jail) they *do* tend to feel more guilty about their sex behavior, but there are no real differences overall. However, if one compares the sex offenders or total prison population against the college students on attitudes we do find them a little more prudish in what they say—but not apparently in what they do, compared to the college students. This undoubtedly

[9] When the question is worded slightly differently we, as might be expected, get slightly different results: "If a sexual scene were essential to plot development" (not just for entertainment) only 69% would wish to prohibit it.

reflects the differences between current middle and lower class cultures out of which they emerge.

In the study of Goldstein and associates (1970) they attempted to obtain a good control sample to compare their sex offenders against. But unfortunately they were not too successful. Their controls were significantly younger and better educated than the sex offender groups. (Example: nearly 80% of his controls were under 30 vs. only 25% for one of the child molester groups.) This makes it very dangerous to say that sex offenders are different or the same compared to "normals" when your comparison group is different. Remember the carrot juice example and its relation to sexual activity?

The seeming disregard for these very elementary considerations in evaluating research literature. The Commission Report writers leaves one very concerned about how they arrived at their other conclusions.

The evidence from many studies would indeed suggest that certain types of sex offenders are sexually immature and regressed, but other types are sexually aggressive and very promiscuous starting at very early ages. Making these kinds of distinctions would be seen as most important in any evaluation of the research literature. The Commission Report fails badly in this regard.

14. DOES PORNOGRAPHY ALTER BEHAVIOR?

The Commission Report states in their conclusions, "When people are exposed to erotic materials some persons increase masturbatory of coital behavior, a smaller proportion decrease it, but the majority of persons report no change in these behaviors. In general, established patterns of sexual behavior were found to be very stable and not altered substantially by exposure to erotica." There are a number of problems in drawing these conclusions: (a) In a number of the 16 studies reviewed (focusing on this problem) behavior was studied only for the 24 hours before and after exposure to the pornography, (b) In some other studies (Amaroso, 1970) the total exposure time to erotica for all subjects was only 50 seconds, in another study (Byrne & Lamberth, 1970) total exposure time was 6½ minutes (hardly sufficient to conclude that exposure to erotica has or has not an effect) but (c) probably the major methodological problem is the fact that 13 of the 16 groups who were deliberately exposed to pornography were limited to young college students, plus one group of middle aged couples almost all college educated, and a final two groups who were "sex offenders." Since a great deal of evidence from the Commission studies indicate that young college educated persons are those already having high exposure to pornography (compared to conservative, older, lower class subjects)—this means *that most or all of their subjects have already been repeatedly exposed to pornography* which means that if it were to have a "corrupting" effect this would probably have *already* started to occur. This also would mean that one wouldn't expect experimentally great changes in sexual behavior before and after exposure even if in fact pornography were indeed to have a "viciously depravine influence." Failure to control for this factor makes the conclusions drawn by the Commission writers very questionable. And (d) it is highly unlikely that any subject in such an experimental study under such close scrutiny would engage in any anti-social sex behavior, and even if he did admit to it in most studies reported *they fail to even ask this type of question.* (e) All samples were restricted to volunteers who chose to be exposed to pornography which would introduce a systematic bias. And (f) finally, as Davis and Braucht point out these samples (young college educated) are not the people of "popular concern" (e.g., the unstable, more vulnerable, from defective environments). For scientists to confidently conclude that there are essentially no significant sex behavior changes or increase in antisocial sex activity on the basis of these kinds of data takes a considerable amount of "faith, ESP, and some admixture of divine revelation."

15. ADDITIONAL SIGNIFICANT LIMITATIONS IN COMMISSION'S RESEARCH

(a) No Longitudinal Studies: There were no longitudinal studies considered or contracted by the Commission studying the long range effects of exposure to pornography and its effect on sexual activities, sex offenses, changes in moral values, etc. Nearly all studies cited covered only a few days or weeks for the subjects (and in most cases only an hour to two). The longitudinal study properly done would give the most powerful evidence concerning pornography's effects. There were none here.

(b) No Clinical Studies: There were no in-depth clinical studies of individuals assessing the impact of use of pornography on attitudes, sex offenses, character, anti-social behavior, etc.

(c) Omission of Studies on "Porno-Violence": No attention was paid to the problem of porno-violence where pornography and violence are linked together in fiction and increasingly in motion pictures. This omission is particularly surprising in view of the findings in the Final Report of the National Commission on the Causes and Prevention of Violence (1969) which link visual presentations of violence to aggressive acting out behavior. Their findings would appear to have some implications for situations where violence and pornography are combined (e.g., sexual abuse and physical injury inflicted on the female/male, etc.).

(d) Omission of Studies and Evidence in "Imitative Learning" Area: There is an omission of discussion of studies in the area of imitative and social learning by such investigators as Albert Bandura and his associates at Stanford University. Since this body of research suggests that a significant amount of learning occurs through watching and imitating the behavior of others this would logically appear to have great relevance to any pornography "effects" studies. If Bandura's work (as well as others in this area) have any validity, it would suggest that certain types of pornography involving whole sequences of behaviors probably would effect some individuals if they saw it consistently modeled on the screen or in fiction (e.g., suggest to them anti-social sex behaviors which they might imitate or repeat). This is certainly indicated by the findings of the violence literature. In view of the type of evidence and findings presented by the Bandura "school" it would seem, at the very least, that the Commission staff would indicate some cautions or concerns. There are none.

(e) Absence of Youth Studies: While the Commission in their Final Report state ". . . [there] is no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crime, delinquency, sexual or nonsexual deviancy, or severe emotional disturbances . . . or plays a significant role in the causation of delinquent or criminal behavior among *youth* or *adults*," they do not mention that there was *not a single* experimental study, longitudinal study, or clinical case study involving youth. The only information they have is from questionnaires which are subject to the usual problems of willingness to be truthful (especially about sex data), memory, misinterpretation of questions, etc. Their conclusions about youth would appear extremely incautious in view of the limitations of significant data.

(f) Possible Bias in Using Only Volunteers Who'd Submit to Pornography: All studies which probed sexual histories, or exposed individuals to pornography were to some degree biased by using only those people who would submit to such exposure or questioning. This would be especially true for female subjects. Those rejecting of pornography would not be studied.

(h) Varying Definitions, Types and Amounts of Erotic Material Used: While some studies used similar pornographic slides or movies, there still existed great variation in the type of pornography which was used (sometimes pictures, sometimes movies, sometimes written material). These varied greatly in their erotic and "offensive" qualities. In the case of "retrospective reports" where people were interviewed or filled out questionnaires they often had to necessarily rely on their subject's own definition or unique interpretations of what constituted pornography. Thus saying that one witnessed sexual intercourse on the screen could involve something bland or explicity offensive.

In some studies (Amoroso, 1970) subjects saw 27 slides projected on a screen for two and one half seconds each, and only twenty of which could be regarded as "pornographic" which means a total viewing time of fifty seconds for the erotic material. To conclude that pornography effects or does not effect behavior on the basis of such limited exposure and no control group would seem incautious at most.

SUMMARY AND CONCLUSIONS

1. The Commission on Obscenity and Pornography (majority report) is recommending major changes in laws and social policy in an area of controversy, public concern, and also in an are having health and welfare implications for adults and minors (e.g., remove all controls on pornography for adults and children—except, in the latter case, pictorial materials).

The basis for recommending these changes is that the Commission found no empirical scientific evidence showing a causal relationship between exposure to pornography and any kind of harm to minors or adults.

2. However it should be stated that conclusively proving causal relationships among social science type variables is extremely difficult if not impossible. Among adults whose life histories have included much exposure to pornography it is nearly impossible to disentangle the literally hundreds of causal threads or chains that contributed to their later adjustment or maladjustment. Because of the extreme complexity of the problem and the uniqueness of the human experience it is doubtful that we will ever have absolutely convincing scientific proof that pornography is or isn't harmful. And the issue isn't restricted to, "Does pornography cause or contribute to sex crimes?" The issue has to do with how pornography affects or influences the individual in his total relationship to members of the same as well as opposite sex, children and adults, with all of its ramifications.

The "burden of proof" or demonstration of no harm in a situation such as this, is ordinarily considered to be on the shoulders of he who wishes to introduce change or innovation. It might be noted that in areas where health and welfare are at issue, most government agencies take extremely conservative measures in their efforts to protect the public. In the case of monosodium glutamate which was recently removed from all baby food by government order, the evidence against it, in animal studies, was quite weak. However, because the remote possibility of harm existed, measures were immediately taken to protect children from consuming it.

3. The evidence the Commission presents does not clearly indicate, "no harm." There

are also many areas of "neglect" relative to the Commission's studies of pornography's effects (e.g., no longitudinal studies, no in depth clinical studies, no porno-violence data, no studies in modeling or imitative learning, etc. etc.).

4. In the Commission's presentation of the scientific evidence there are frequent errors and inaccuracies in their reporting of research results as well as in the basic studies themselves. Frequently conclusions which are not warranted are drawn inappropriately from data. There is a frequent failure to distinguish or discriminate between studies which are badly flawed and weak and those of exceptional merit. But, most serious of all, data from a number of studies which show statistical linkages between high exposure to pornography and promiscuity, deviancy, affiliation with high criminality groups, etc. have gone unreported. This suggests a major bias in the reporting of results which raises a major issue of credibility of the entire report. Regardless of why it occurred, it suggests that at the very least, a panel of independent scientists be called in to reevaluate the Commission research and the conclusions which might be validly drawn from it before any major changes occur in laws and social policy regarding pornography's control.

APPENDIX

A. Sex crimes in the United States and pornography

The Commission after being criticized for inaccuracies in their early reports on incidence of sex crimes in America have made a number of corrections. However, it still is incomplete and a summary of this data would be in order here. Some have argued that because sex crimes have apparently declined in Denmark while the volume of pornography has increased, we need not be concerned about the potential effect in our country of this kind of material (because, essentially, of Denmark's benign experience). However two considerations must be noted. First we are a different culture with a greater commitment to the Judeo-Christian tradition; and secondly we are actually only a year or so behind Denmark in the distribution and sale of pornography. Hardcore written pornography can be purchased anywhere in the U.S. now. Hardcore still pictures and movies can now be purchased over the counter in some cities. Anything can be purchased through the mails. And in a few cities people can attend hardcore pornographic movies. About the only thing we don't have, which Denmark has, are live sex shows. What is most relevant are sex crime statistics in this country, not Denmark. Since it was in about 1960, at the beginning of the decade, that pornography began to flower in the U.S. relevant statistics should be examined carefully. One cannot impute cause and effect here, though the Commission infers it (in the other direction) with the Denmark sex crime data:

Reported rapes (verified): Up 116%, 1960–69 (absolute increase). Up 93%, 1960–69 (controlled for pop. growth).

Rape arrests: Up 56.6%, all ages 1960–69. Up 85.9%, males under 18 1960–69.

Source: Unified Crime Statistics 1970.

"Sex offenses" (homosexual acts, statutory rape, etc.): All ages: 1960–69: Down 17%. Under 18: 1960–69: Down 21%. This is a spurious not true decline. Is due to change in law enforcement policy, primarily involving homosexual acts between consenting adults—which are now rarely prosecuted though early in the decade were.—U.S. Justice Dept.

Source: Unified Crime Report 1970.

Prostitution and commercialized vice: Up 80.1%, 1960–69, all ages. Up 120.2%, 1960–69, girls under 18 (numbers are small here).

(NOTE.—The bulk of prostitutes are 15-24 years, peak age: 22, and only 13% of sex offenses (arrests) are women.)

Source: Unified Crime Statistics 1970.

Illegitimate births: 1. General Note: During decades 1947–67 rate of illegitimacy doubled per 1,000 never married females. 1960–67 illegitimacy ratio up 71% (which is the number of illegitimate births per 1,000 live births).

Source: P. 31, 1970 Natality Statistics.

2. Illegitimate birth rate: Under 15, 1940, 2.1; 1967 6.9 (350% increase). 15–19, 1940 40.5, 1967 144.4 (350% increase). During this period the population of the U.S. increased 50%.

Source: 1970 New York Times Enyclopediac Alamanac.

3. "The greatest current rate of increase in illegitimacy is with 15–19 year olds." (Source: page 31, 1970 Natality Statistics, U.S. Public Health Dept.)

V.D.—Gonorrhea: All ages: 1960–69: Up 76%.

Females 15–19: Up 52% 1965–68.

Females 20–40: Up 36% 1965–68.

Females 25–29: Up 25% 1965–68.

Source: V.D. Fact Sheet, 1969, U.S. Public Health Service.

Divorce rate: 1960, 393,000; 1969, 660,000. Up 70%. (2.2 per 1000 pop.) (3.3 per 1000 pop.)

Source: Monthly Vital Statistic Report, March 12, 1970, U.S. Public Health Service.

The above data suggest increases in most types of social pathology in the U.S. While this is associated with an increase in pornography, no claims as to a causal relationship can be made from this data.

B. Do people get satiated through over exposure to pornography?

In the Commission's single study investigating satiation of sexual arousal and interest in pornography after 15 days of heavy exposure to it on the part of 23 college males, they have pretty well demonstrated the obvious (e.g., that people can get weary of it). But as physician John Cavanaugh has commented, "It is generally recognized that the sex appetite and interest is the one most quickly satisfied but also the one quickest to return." Voltaire's Candide also found this to be true. Clinical experience indicates that a man may be stimulated by his partner's nude body for many years, even though there may be temporary periods of satiation as to need for sex and erotic stimulation. The periodicity of the sex drive suggests continued cycles of interest and satiation continuing throughout life. The Commission's conclusion implies that if people get all the pornography they want, they'll soon get tired of it and not want more. This is certainly one popular theory advanced by some students of the issue. But the evidence here suggests only that if college males are given a great glut of pornography in a laboratory setting they will temporarily satiate. But, essentially the same may be said of having sexual intercourse, eating, drinking, etc. Considering the limited time this experiment ran—not much more can be said about this issue. Another limitation of the Commission study was that it did not approximate a real life situation or use of pornography in one's own milieux. It involved a deliberate forced "over feeding" of pornography for pay. It also meant removing all clothing and putting on a loose robe, hooking up one's penis to a condom and electrodes, attaching electrical instruments to both ears, putting a bellows around one's chest, being observed through a one way window and sitting in an "isolation booth" for 1½ hours a day for 15 days.

According to other Commission studies (such as those by Charles Winick) of consumers of explicit sexual materials "out in real life" (e.g., patrons of "adult" movies and bookstores) 52% are regular customers and are "regular or heavy users" of erotica. In other words there is no evidence that people "satiate" in real life. The consumption of pornography is regulated to the tastes of the individual consumer. In Nawy's study of the "San Francisco Marketplace" 70% of the patrons of erotica he surveyed attend sex movies once a month or more. He also found that 49% of these people were currently having sex with two or more partners in and out of their households, and 25% had been having sex with 6 or more partners in the past year. Frequency of intercourse rates were very high for his sample suggesting that erotica may have a "booster or accelerating" effect on sex activity. In any event the data outside the laboratory where people are studied in their own environment and "on the hoof" suggest that those interested in erotica or pornography consume it regularly and for "sexual" reasons.

Berger (1970) in his survey of 473 working class adolescents concludes, "It would appear that even high levels of exposure to sexually explicit materials did not bore the young people who participated in this study." None of this is mentioned in the Commission report; even though all of this data comes from commission studies.

C. Ethical considerations in exposing young people to pornography

The Commission provided many of the researchers with a number of slides and movies depicting explicit hardcore pornography. Certain ethical issues might be raised in exposing large numbers of young people (18 and over) to what sometimes involved large quantities of pornography. And while consent was obtained, sometimes the young people (male and female) were brought together at the research room before being told that the experiment would involve being shown hardcore pornography. They were told that they need not participate if they did not wish to. However backing out at this point and conceivably "losing face" with their peers could create a problem for some people. Since the data from a number of studies did indicate that some people were "emotionally upset", sexually aroused, felt guilty, disgusted, etc., the ethical problems and protection of the rights of human subjects would be a matter for discussion and review here.

NATIONAL ENERGY CRISIS

Mr. GORE. Mr. President, at midnight tonight, unless some 11th hour action transpires, electric power rates will be increased an average of 23 percent throughout the area served by the Tennessee Valley Authority which includes nearly all of Tennessee.

No miracle is necessary to stop this highly inflationary increase in the cost of living and in the cost of doing business. It could have been forestalled by the President under powers given him by the Congress. Unless he has chosen, or between now and midnight chooses, to use these powers, then a very heavy burden will fall upon the people. Once in effect, these Nixon rates will be hard to throw off, but I will try to roll them back.

Though these higher electric rates fall heavily on the people of Tennessee, it is not within my region alone that power blackouts and brownouts are threatened this year. It is not in my State alone that schoolchildren, for the first time since the great depression, may be asked to stay home because there is not enough heat in the classroom to warm them. It is not alone in my mid-America, but along the eastern seaboard, too, that talk of rationing is serious conversation. Neither are we talking of another

poverty problem—though it sounds like that—but of affluent people, living in otherwise comfortable homes, who in normal circumstances send their children to well-equipped schools.

The crisis to which I refer is not one caused by forces beyond our control, either. There were indications last evening that the administration would attempt to make it appear so when one of its spokesmen, Paul McCracken, asked Americans to be prepared for a fuel shortage this fall because disruption in Libya by Palestinian guerrillas—and those are his words—have disturbed our fuel oil supply.

This but diverts attention from the limitations on fuel oil imports imposed by Executive orders only recently, and from deliberate production limitations imposed by the oil industry in the Southwest for the purpose of holding up prices and profits. To blame Mid-East bandits for industrial banditry will never suffice to explain why the lights dim along the Atlantic this winter, or why Tennesseans pay more for less electricity.

I suggest, as others have, that the basic fuels from which we derive the energy necessary to our very survival are today concentrated in the hands of a relatively tiny band of super-rich men. These giant corporations not only manipulate supply and demand, but they are arrogantly trying, with the same wealth extracted from the public, to dictate who will serve the public in elected offices everywhere.

At the well's bottom, it is oil. The oil corporations now have effective monopolistic control of oil, natural gas, and coal. Thus, they control fossil fuels wherever it is raised from American soil and they control, too, much of the oil pumped from the tense Middle East. There is the strongest evidence that they dictate imports and exports, shutting and shifting that international valve to gauge and coordinate them with the opening and closing of domestic quotas—always to serve an insatiable demand for higher profits.

Moreover, these same interests now reach for control of nuclear fuel.

They have been benefitted by tax favoritism for years. They have lubricated the wheels of politics and fed political budgets of their supporters.

The result of inside political machinations will touch the pocketbook of every household and every business in Tennessee. This is particularly unfortunate for TVA customers because we have come to depend upon reasonably priced electricity to cook our food, to heat our homes, to milk our cows and to drive the wheels of our industry. Many poor people are going to find the high cost of power hard to pay, as is business and industry.

There appears to be spread out before us the complex, almost unfathomable, outline of a giant puzzle whose jigsaw pieces defy comprehension. The pieces keep changing shapes every time the hand reaches out to slide one into what seems at the moment its place. The pieces are slippery—as slick as oil—and the puzzle's object seems designed to assure that it is never sufficiently worked to allow a player to make out the picture.

But somebody goofed this time. Somebody got greedy and the patterns of trust cannot now be hid. Monopoly is clearly the name of this game. The victims are the people, almost all the people. I call on this body, in the obvious absence of administrative resolve, to become the instrument that saves the people from unbearable cost, unfair tax burdens, and almost total reliance upon manipulated control of the fuels essential to all our great public utilties, because the worst has not come.

It is time, I believe, that the ugly alliance between politics and oil be looked into.

It is time, I think, that the Congress determine the extent of unsavory influence.

I ask that the U.S. Senate, through the Antitrust and Monopoly Subcommittee, make a deep investigation of the economic factors behind this electric rate increase.

The national interest is involved. My appeal is not for the Tennessee Valley alone. As I have warned since 1966, a national crisis in energy is upon us.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

DIRECT POPULAR ELECTION OF THE PRESIDENT AND THE VICE PRESIDENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The ACTING PRESIDENT pro tempore. The joint resolution will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. Calendar No. 1135, 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 ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana

The Chair hears none, and it is so ordered.

The Senate resumed the consideration of the joint resolution.

ORDER OF BUSINESS

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business, Senate Joint Resolution 1, be temporarily laid aside and that the Senate turn to the consideration of S. 2453, which was laid before the Senate last night and which, the Senate was informed, we would take up about this time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAYH. Mr. President, reserving the right to object, and I shall not object, for the record I would like to advise our colleagues that those of us who are deeply concerned about the refusal of the Senate on yesterday, for the second time, to permit the Senate to vote on electoral reform have not given up our efforts to try to persuade them to see that a different course of action might be in the better interests of the country. However, the Senator from Indiana is not inclined to impose his feelings and to inconvenience the Senate; and again I wish to express personal appreciation for the patience and tolerance of the distinguished majority leader.

Mr. President, I do not object.

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

The bill will be stated by title.

The assistant legislative clerk read the bill by title, as follows: S. 2453, a bill to further promote equal employment opportunities for American workers.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. MANSFIELD. Mr. President, will the Senator yield to me without losing his right to the floor?

Mr. WILLIAMS of New Jersey. I yield.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMINICK. Mr. President, we are taking up a very important bill.

The ACTING PRESIDENT pro tempore. The Chair will state that the Senator from New Jersey (Mr. WILLIAMS) has the floor.

He yielded to the Senator from Montana without yielding his right to the floor.

Mr. DOMINICK. Will the Senator yield to me?

Mr. WILLIAMS of New Jersey. I yield.

Mr. DOMINICK. We have a rather important bill here, as I am sure the Senator from New Jersey will agree. I think that the amendments I am prepared to

offer are fundamental to the bill. I submitted them last night for printing. The Government Printing Office apparently is bogged down for some reason, and they have not yet arrived. We are checking on that now.

Since I think they are important, and that they ought to be available to Senators when we get around to debating them, it is my intention, as soon as I possibly can, to ask for a live quorum, to find out who is here and give us a little time to get these amendments up here.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. WILLIAMS of New Jersey. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the unfinished business, Senate Joint Resolution 1, remain in a temporary status until the conclusion of morning business tomorrow.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. GRIFFIN. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. BYRD of West Virginia. Mr. President, I do not believe the Senator understood my request.

Mr. ERVIN. I did not. I could not hear it.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendments in the nature of a substitute to S. 2453.

Mr. DOMINICK. Mr. President, I suggest the absence of a quorum. This quorum call will be live.

The ACTING PRESIDENT pro tempore. Does the Senator from New Jersey yield to the Senator from Colorado for that purpose?

Mr. WILLIAMS of New Jersey. Mr. President, I suggest the absence of a quorum.

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

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

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

PRIVILEGE OF THE FLOOR

Mr. JAVITS. Mr. President, I ask unanimous consent that Eugene Mittelman, of the Committee on Labor and Public Welfare, may have the privilege of the floor during the debate on this bill.

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

Mr. ERVIN. Mr. President, I ask unanimous consent that Rufus L. Edmisten and Lawrence M. Baskir, members of the staff of my subcommittee may have the privilege of the floor during the debate on this bill.

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

Mr. DOMINICK. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. DOMINICK. Is there a rule that a Senator's staff member cannot be on the floor without unanimous consent?

The ACTING PRESIDENT pro tempore. There is no rule to that effect.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BYRD of West Virginia. Mr. President, to make it perfectly clear, is it not true that only four staff members of a committee may be allowed on the floor without unanimous consent?

The ACTING PRESIDENT pro tempore. Four staff members, pursuant to a regulation promulgated by the Committee on Rules.

Mr. DOMINICK. Mr. President, I ask unanimous consent that my own staff member, Mr. Wise, who is also really a member of the committee staff on the minority side, may have the privilege of the floor during the debate on this bill.

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

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that Mr. Blackwell, Mr. Nagle, and Mr. Ellisberg, of the committee staff, may have the privilege of the floor during the debate on this bill.

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

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[No. 339 Leg.]

Allen	Eagleton	Mansfield
Boggs	Ervin	McCarthy
Byrd, W. Va.	Griffin	McIntyre
Dodd	Hatfield	Pell
Dole	Javits	Thurmond
Dominick	Kennedy	Williams, N.J.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico, (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Alabama (Mr. SPARKMAN), the Senator from Texas (Mr. YARBOROUGH), the Senator from Ohio (Mr. YOUNG) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Utah (Mr. BENNETT), 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) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Iowa (Mr. MILLER) is detained on official business.

The PRESIDING OFFICER (Mr. EAGLETON). A quorum is not present.

Mr. BYRD of West Virginia. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Allott	Goldwater	Pastore
Anderson	Gore	Pearson
Baker	Gurney	Percy
Bayh	Hansen	Prouty
Bible	Hart	Proxmire
Brooke	Holland	Randolph
Burdick	Hollings	Russell
Case	Hughes	Saxbe
Church	Jackson	Schweiker
Cook	Jordan, Idaho	Scott
Cooper	Long	Smith, Maine
Cotton	Mathias	Spong
Cranston	McClellan	Stevens
Curtis	McGovern	Symington
Eastland	Metcalf	Talmadge
Ellender	Mondale	Williams, Del.
Fannin	Moss	Young, N. Dak.
Fong	Nelson	
Fulbright	Packwood	

The PRESIDING OFFICER. (Mr. EAGLETON). A quorum is present.

The Senate will be in order.

The question is on agreeing to the committee amendment in the nature of a substitute. The Senator from New Jersey is recognized.

Mr. DOMINICK. Mr. President, we have all kinds of amendments to the committee amendment. I thought we would follow the normal procedure and have the Senator from New Jersey outline the bill before we presented amendments.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. GRIFFIN. Mr. President, before the Senator begins his statement, will the distinguished chairman yield for a brief interruption that might be helpful to Members of the Senate?

Mr. WILLIAMS of New Jersey. I yield.

Mr. GRIFFIN. Mr. President, a number of Senators are very much interested in this bill and they are trying to become acquainted with it, and they consider it very important. I have just asked for a copy of the printed hearings and I do not seem to be able to get copies from the pages. I wish to ask the chairman of the committee whether there were hearings and, if so, whether they were printed and are available.

Mr. WILLIAMS of New Jersey. There were hearings and printed copies certainly should be available.

I have copies of the hearings, as well as the report, on the desk.

Mr. GRIFFIN. They are printed and available?

Mr. WILLIAMS of New Jersey. Yes.

Mr. MANSFIELD. Mr. President, will the Senator from New Jersey yield?

Mr. WILLIAMS of New Jersey. I yield

ORDER FOR ADJOURNMENT TO TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon tomorrow.

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

(Later in the day the above order was changed to provide for the Senate to adjourn until 11 a.m. tomorrow.)

ORDER FOR ADJOURNMENT FROM THURSDAY TO FRIDAY, OCTOBER 2, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 12 noon Friday.

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

ORDER FOR ADJOURNMENT FROM FRIDAY TO MONDAY, OCTOBER 5, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business on Friday, it stand in adjournment until 12 noon Monday next.

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

EQUAL OPPORTUNITIES ENFORCEMENT ACT

The Senate continued with the consideration of the bill (S. 2453) to further promote equal employment opportunities for American workers.

Mr. WILLIAMS of New Jersey. Mr. President, too often when we discuss the need for equal employment opportunity, we focus on the desirability of insuring "fairness" in employment, the "right to have a decent job", and the obligation of all citizens to help our disadvantaged Americans. However, in these discussions, we somehow fail to perceive that this area too is an important part of our basic law and order problem. The fact is that many of the institutions and individuals in our society responsible for providing equal employment opportunity, are deliberately disregarding their obligation to contribute to law and order in society when they violate the Civil Rights Act of 1964. As we all know, that act declares that it is an unlawful employment practice to fail or refuse to hire or promote, or to otherwise discriminate against a person with respect to his employment because of race, color, religion, sex or national origin. When these violations take place, they cause the loss of economic security and the inability to maintain a decent household just as surely as the burglar in the night steals money, savings, and possessions.

I think it is useful in illustrating the results of this continued and flagrant disregard of the law to examine into this unlawful conduct as it affects the ability of so many members of minority groups in this country to participate in the economic life of our society.

The statistics are vivid and I would like to recite just a few of the more significant results. In 1969 the average unemployment rate for Negroes and other minorities was 6.4 percent. By comparison, the rate of white unemployment was less than half—3.1 percent. For minority youth, in 1969, the unemployment rate was 19 percent, while the unemployment rate for white youth was 7.9 percent.

By July of 1970, the unemployment rate for minorities had leaped to 9.3 percent, compared with a white unemployment rate of 4.8 percent. The unemployment rate of nonwhite teenagers skyrocketed to 28.7 percent.

Looking at the problems in dollar terms, the median family income of Negroes was $5,999 in 1969. This was 39 percent less than the median family income of $9,794 for white families.

The outlook for the future is equally grim unless new efforts are made.

Just a little more than 6 years ago, Congress enacted Title VII of the Civil Rights Act of 1964. This act recognized the prevalence of discriminatory unemployment practices in the United States and the need for Federal legislation to deal with the problem of such discrimination.

Title VII of the Civil Rights Act established the equal employment opportunities commission as an independent bipartisan agency charged with the administration of the act's substantitive provisions.

The act contemplated informal methods of conciliation and persuasion as the primary mechanism for obtaining compliance. Only when a pattern or practice of resistance to the statutes was indicated did it make provision for enforcement by the Government and then only by the Attorney General.

Title VII quite frankly has not been a notable success. In 1964, employment discrimination tended to be viewed as a series of isolated and distinguishable events, for the most part due to ill will on the part of some identifiable individual or organization. It was thought that a scheme that stressed conciliation rather than compulsory processes would be most appropriate for the resolution of this essentially human problem, and that litigation would be necessary only on an occasional basis in the event of determined recalcitrance. Unfortunately, this view has not been borne out by experience. Not enough is being done to obey the act and improve the situation. In its first 5 years of existence, the Equal Employment Opportunity Commission has received over 58,055 actionable charges of which approximately 50-percent complained of discrimination because of race; 22 percent were concerned with sex discrimination, with the remainder of the charges involving national origin and religion.

Furthermore, during each year of the Commission's existence, the number of charges coming per year has increased in fiscal year 1970 alone, the commission received 17,780 new charges, and the indications for the current year are that incoming charges will continue to multiply at the same rate.

Compliance reviews and employment surveys continually reflect the same traditional situation. Minority workers—Black, Spanish-surnamed, Oriental, Indians—are relegated to the lowest paying, least desirable jobs—if they get hired. Often, seniority systems further perpetuate the problem by locking the minority worker into a line of progression that tops out at an hourly income far below the highest positions in an all-white line of progression.

The burden of unfair employment practices does not just fall on our minority citizens. A major area of compliance ignored by employers is the rights of female workers.

There were 30.5 million women workers 16 years of age and over in the United States in 1969. In fact, about 40 percent of all workers are women. More than three million or 8 percent of all women who were not working in 1969, reported that they wanted jobs. I wish to stress that women who are working or who express a desire to work are not necessarily women who have chosen to pursue careers for their own satisfaction.

Many families absolutely cannot manage without the mother's earnings. Of all working mothers with children under 6 years of age in March 1969, one-third were either widowed, divorced or separated from their husbands, or had husbands whose incomes in 1968 were below $5,000.

Nevertheless, employers continue to discriminate against female workers and, in particular, I am talking about money. In 1968, the average American woman who worked full time earned only $58.20 for each $100 earned by the average American man. Furthermore, Government figures indicate that even a high degree of education and training does not necessarily bring the woman a salary comparable to a man's. In 1968, a woman with 4 years of college was typically earning $6,694 a year while a man with an 8th grade education averaged $6,580—just a fraction less. Remember we are often talking not just about woman's right to use her resources for self-fulfillment, we are also talking about a woman's right to be able to provide for her children. Without a doubt, the problem of female underemployment presents deep sociological ramifications, and employers, employment agencies, and labor unions cannot deny the responsibility they have to abide by the law and therefore work to treat women on an equal basis with men.

All of this statistical data and recitation of the sad history of compliance with this act has very real significance to our efforts in trying to make a better world in which we live. Unless we are able to bring some measure of hope for progress for a better life in our society to the sons and daughters of our citizens and make absolutely clear that they have a stake in the system, we are all going to suffer with their disillusionment.

I realize that enactment of this bill will not automatically and overnight end employment discrimination in this country. But this bill will take us forward. The time has come to bring an end to job discrimination once and for all and to insure to every American the opportunity to the decent self-respect that goes with a job. The hopeful prospects that title VII offered millions of Americans in 1964 must be revised and brought to fruition if we are to contribute to maintaining a healthy society and a nation dedicated to justice.

The bill, as reported by the committee, provides for significant revisions in the primary enforcement mechanisms of title VII. The Commission would continue to seek voluntary resolution of disputes, but if conciliation efforts were unsuccessful, the Commission would be authorized to issue complaints, hold hearings, and where unlawful employment practices are found, issue appropriate orders subject to review by the courts of appeals. Upon petition by either the Commission, the respondent, or the person alleged to be aggrieved, a court of appeals may enter an order enforcing, modifying, or setting aside the order of the Commission. In accordance with the recommendations of the Administrative Conference of the United States, petitions for review must be filed within 60 days of the Commission's order. This avoids the burdensome experience encountered by the NLRB, which alone among all regulatory agencies, does not possess authority to issue orders that are in some measure self-enforcing.

The committee has taken pains to see that the rights of all parties to EEOC proceedings are protected. The right to a hearing on the record before a disinterested trial examiner is specifically provided for, and all proceedings must be conducted in accordance with the Administrative Procedure Act. Interested persons may intervene or appear as amicus curiae, and all parties to proceedings before the Commission may take part in any review in the court of appeals. Finally, provision is made for review by the U.S. Supreme Court as provided in 28 United States Code 1254.

The bill also contains provision for individual recourse to the Federal district courts if the Commission dismisses a charge, or if it has not issued a complaint or entered into a conciliation agreement agreeable to the parties within 60 days after filing of a charge. Under certain circumstances, the private right of action would also obtain if the Commission has issued a complaint but taken no action on it for 6 months. In any event, duplication of proceedings is avoided by termination of one at the commencement of the other. For example, if an individual should perfect and exercise his right of court action, the Commission would thenceforth be divested of jurisdiction over the matter. Likewise, if the Commission issued a complaint and proceeded with reasonable speed, its jurisdiction would remain exclusive prior to the institution of enforcement or review proceedings in the court of appeals. The committee concluded that this scheme would protect aggrieved persons from undue delay, as well as prevent respondents from being subjected to dual proceedings.

Two other significant changes were made in the statute's enforcement provisions: First, with respect to cases pending before the Commission at the time of the bill's enactment, court enforcement rather than cease-and-desist mechanisms would be available to the Commission—this should obviate time difficulties involved in "tooling up" cease-and-desist machinery, and second, the authority of the Attorney General to institute court actions directed at "patterns or practices" of resistance to the act would be transferred to the Commission after 3 years, contingent upon certification by the Attorney General and three members of the Commission that such transfer would be appropriate.

The bill also makes a number of changes in the coverage of the act. Title VII's jurisdiction is expanded over a period of 3 years to reach employers and unions with eight or more employees or members; it is also extended to State and local governments, and educational institutions. In addition, provision is made for transfer of the Civil Service Commission's equal opportunity responsibilities with respect to Federal employment to the EEOC. All of these changes are intended to provide for a more universal and effective application of the national policy against job discrimination.

The bill would make a number of other changes in title VII involving filing requirements for charges, Commission organization, terms and compensation of members, and revision of the record-keeping requirements of section 709(d) to lessen the duplicatory effect of overlapping Federal and State regulations. The investigations language of section 11 of the National Labor Relations Act has also been incorporated to complement the new enforcement authority bestowed on the Commission.

In the interest of time, I leave further explanation of the bill's provisions to the debate which will follow. I would urge the Senate to proceed with a sense of urgency, and recommend the bill's prompt passage. This legislation is long overdue and can wait no longer.

Mr. JAVITS. Mr. President, I fully support S. 2453, as reported out by the Committee on Labor and Public Welfare. I think this is a most significant bill for the United States, because it deals with one of the principal causes of tension in this country.

There are generally ascribed three causes for such serious domestic problems as we have. One is the Vietnam war, the second is the rebellion of youth, as shown by the so-called college disturbance syndrome, and the third is racial tension.

This is a landmark measure, an effort to bring up to date the historic Civil Rights Act of 1964.

While I speak on this point, Mr. President, I should mention the name of Everett Dirksen, our late minority leader. Without Everett Dirksen, there would never have been a Civil Rights Act of 1964. Though he was one of the principal factors in the construction of this particular provision, the equal employment opportunity provision, in the form which it took, which was rather pallid and has been proved to be inadequate by time, he was deeply convinced it was necessary at that time to leave it in that form in order to have this landmark legislation pass at all.

I believe now, after 6 years, the time is properly before us to endeavor to repair what has been shown to be an inadequate structure in a critically important field so far as minorities are concerned. So I call this a piece of unfinished national business.

In title VII of the Civil Rights Act the Congress guaranteed to every American the right to be free from racial or religious or sex discrimination in employment. We also established the Equal Employment Opportunity Commission to administer the law but, unfortunately, as the result of compromises necessary to overcome a filibuster, we had to agree to strip the Commission of any effective power to enforce the act. Thus, under present law, if the Commission is not successful in inducing voluntary compliance with the act, it is up to the person who is the subject of the unlawful discrimination to institute his own law suit against the employer or union guilty of violating the law, unless it can be shown that a pattern or practice of discrimination exists, in which case the Justice Department has the power to sue.

The purpose of S. 2453 is to remedy this wide gap in the Civil Rights Act of 1964 by granting to the Equal Employment Opportunity Commission the power to issue administrative cease-and-desist orders similar to those issued by other administrative agencies, such as the National Labor Relations Board.

When the 1964 act was under consideration, I and a number of other Senators were convinced that a governmental agency with some form of enforcement power was absolutely necessary to guarantee the fulfillment of the basic rights created by title VII of the act. We had to swallow hard to accept the emasculation of the Commission necessary to secure the votes needed for cloture.

Sadly enough, experience under title VII to date has borne out the worst of our fears. Conciliation alone—really only sweet talk at best—has not succeeded in ending discriminatory employment practices, nor does it show any reasonable promise of doing so. The statistics of the cases before the Commission speak for themselves: By mid-1969, 4 years after the effective date of the 1964 act, the Commission had investigated over 24,000 charges and had found reasonable cause to believe unlawful practices had been committed in over 63 percent of them. Less than half of these cases were successfully conciliated by the EEOC, leaving over 8,000 cases in which vindication of the rights of charging parties had to depend on either the Attorney General bringing a pattern or practice suit or their bringing their own

lawsuits. Out of these 8,000 cases fewer than 100 pattern or practice suits, and probably no more than 200 private suits, were filed.

These numbers add up to a stark failure to make a reality of the guarantees of equal employment opportunity contained in title VII, and demonstrate beyond doubt the need for legislation giving the EEOC power to enforce title VII.

Mr. President, the tables which are contained on page 5 of the committee report not only bear out the figures I have just given, but also demonstrate that the situation, both in discrimination on account of color and other minority distinctions, and on the ground of sex, has not very materially improved in the years since 1964; hence, the validity of our being here with this act and the critical importance of making it into Federal law.

This matter has been pending for a long time. There still are controversies which will need to be settled by the Senate, but I hope very much the general disposition will be to settle them expeditiously and to get on with the fundamental promise which is contained in the Civil Rights Act of 1964.

I may say, too, Mr. President—and I think this is a great tribute to the sense of decency and the sense of justice in our country—that I see a new attitude by those who on ideological or policy grounds or grounds of principle opposed all Federal civil rights legislation. The effort, as I see it now, is to do their utmost, in accordance with their rights, to shape the legislation according to the way they feel it ought to be shaped, but no longer to go for the jugular, as it were, and to seek to kill it by filibuster or otherwise. I think this is a much more creditable pattern than we faced at other times in the last two decades and that the country should take great heart from it. I should like to pay my respects and credit to the men who were intelligent enough and understood the national will enough so that they could adapt their own attitudes, which are deeply and sincerely held, to what is properly the national pattern in respect of civil rights legislation today.

APPROPRIATENESS OF CEASE-AND-DESIST POWER

I believe that the most appropriate type of power for the Commission is the traditional cease-and-desist order remedy available to other administrative agencies with essentially quasi-judicial functions, such as the NLRB. This leads me to disagree with the administration proposal to permit the Commission to initiate proceedings in the Federal district courts, although I recognize that even that procedure would be a great step forward over existing law.

All of the traditional arguments usually advanced to justify the administrative order approach are fully applicable to the EEOC. Thus, there is clearly a need for uniformity in decisions under title VII which a single decisionmaking agency can much better insure—at least until the Supreme Court decides a number of cases—than the different Federal courts can. There is also a great need for expertise in interpreting and applying the provisions of title VII which only a specialized agency can insure. For example, one of the most critical areas under title VII is testing of applicants for employment. Whether or not a given test is appropriate in a given case presents difficult psychological and sociological issues, as well as difficult problems in the analysis of job content and personnel policy. The Commission has already initiated important work in this area, but under the administration's proposal it will have to educate not only itself, but every Federal judge in the country on the proper resolution of these issues.

There is also the question of speed in case handling. While it is true that the Commission now has a large backlog of cases, its calendar is certainly no worse than that in some of our busier district courts. The committee bill does include provisions encouraging the Commission to dispose of cases within 6 months; that figure will rarely, if ever, be attained in Federal district courts.

For these reasons, I support the granting of cease-and-desist power to the EEOC, as S. 2453 does, and shall oppose the administration proposal to permit direct court enforcement.

EXPANSION OF COVERAGE—EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

S. 2453 makes several other highly desirable changes in existing law, among which are the expansion of coverage to include employees of employers with eight or more employees, employees of educational institutions, and employees of State and local governments.

Coverage of State and local governments, in particular, is a change which I long have urged. Of all the classes of employment which should be subject to title VII the most obvious, it seems to me, is employment in State and local government which, under the 14th amendment, must be free from arbitrary discrimination.

As noted in the committee report on the bill, the employment discrimination problem is particularly acute in those governmental activities which are most visible to the minority communities—notably education, law enforcement, and the administration of justice—with the result that the credibility of Government's claim to exist "for all the people—by all the people" is called into serious question. This point was made particularly strongly by the Civil Rights Commission in its 1969 report on equal opportunity in State and local government employment. The Commission found that minorities are denied equal access to State and local government jobs through both institutional and overt discriminatory practices. Perpetuation of past discriminatory practices through de facto segregated job ladders, invalid selection techniques, and stereotyped supervisory opinions as to the capabilities of minorities as a class were found to be widespread, and if anything, more pervasive than in private employment.

When the special nature of the State and local governmental activity involved is considered, the case for ending this kind of discrimination is even stronger. As the Commission pointed out in the introduction to its report:

> State and local governments are the nearly constant companions of every citizen of the United States. Most personal contacts with governments—so routine as to be taken for granted—are with State or local government. Policemen, firemen, and garbage collectors are included in its work force. From the time a birth is recorded at the city or county health department, to the time a burial permit is issued by the city or county, the daily activities of the citizen—education, employment, commerce, recreation—bring him into constant contact with State and local governments."

TRANSFER OF OFCC AND PATTERN OR PRACTICE SUITS

One of the more controversial changes which the committee did not make in existing law is the transfer to the EEOC of the Office of Federal Contract Compliance, which is responsible for implementing the nondiscrimination and affirmative action requirements of Executive Order 11246 covering Federal contractors. This transfer was contained in S. 2453 as originally introduced, but was stricken from the bill by the unanimous vote of the Committee on Labor and Public Welfare. I strongly support the committee's action in striking the transfer relating to OFCC. Transfer, at least at this time, would be highly undesirable for the following reasons:

First, the Commission presently has a large backlog of cases. It is almost 2 years behind in processing its caseload. We have tried to help the Commission by appropriating the administration's full budget request in order to give the Commission additional manpower, but the fact is that the Commission is now overloaded and will remain so for some time. Giving the Commission enforcement power under title 7 will further increase its workload greatly. Under these circumstances it would be inappropriate to give the Commission the added responsibility for enforcement of Executive Order 11246.

Second, the nature of the Executive order program, involving as it does the cooperation of every single Federal executive agency, requires that its implementation come from the highest level of Government. A Cabinet-level officer, such as the Secretary of Labor can, with complete propriety, consult with the President with respect to implementation of the Executive order program and speak with the President's authority when issuing orders for compliance with its provisions by other Federal agencies and their contractors. The Chairman of the Equal Employment Opportunity Commission, an independent quasi-judicial agency, is not a Cabinet-level officer, and could not speak with a direct line of authority from the President without severely impeding his status as a quasi-judicial officer.

Third, there are sound political reasons for not, at this time, concentrating the entire equal employment opportunity program of the Federal Government in one agency. It is still of vital importance in achieving equal employment opportunity that the public recognize that all agencies of the Federal Government are committed to achieving this goal, not just one independent agency. Furthermore concentration of all equal employment opportunity activity in one agency

would make it extremely easy for those who are opposed to the achievement of full quality of employment opportunity in America to strangle the program through a limitation on appropriations.

Fourth, the problems of coordination which existed among the various Federal programs dealing with equal employment opportunity have largely been solved through the steps which this administration has taken to insure much closer harmony among the Civil Rights Division of the Justice Department, the OFCC, and the EEOC. In particular, the EEOC and the OFCC have entered into a memorandum of understanding designed to avoid overlap, conflict, and duplication of the kind which regrettably did exist in prior years.

Finally, and this is the heart of the matter, the potential significance of the ongoing OFCC program, compared to the title 7 program, particularly in the short range, is such that any proposal to transfer the OFCC program to the EEOC at this time would be like the tail wagging the dog. The virtue of the OFCC program is that it makes it possible to achieve fairly immediate broadscale impact in given areas and industries. The Philadelphia plan, which has more than met its first-year goals, is an example of the type of program that can be generated under the Executive order, with its "affirmative action" requirements, which cannot be implemented under title 7. Title 7 involves a case-by-case, complaint-oriented approach, and requires affirmative action only in response to proven cases of discrimination. While the EEOC and the courts will undoubtedly accomplish a great deal through judicious use of this power over the course of time, it simply cannot be brought to bear immediately, in the manner OFCC has been doing now under the Executive order.

It bears emphasis, in this connection, that this administration after a slow start, for which it received justifiable criticism, has demonstrated beyond doubt that it means business with the OFCC program. In addition to the Philadelphia plan, plans have been promulgated or are in the process of being promulgated for Washington, D.C., and a number of other cities. Moreover, order No. 4 of the Department of Labor has been promulgated spelling out affirmative action requirements for all Federal contractors, not just those under specific plans or in the construction industry.

What a tragedy it would be if a bill designed to strengthen equal employment opportunity of Americans should be transformed into one which would vitiate the only program now in existence making any substantial progress toward that end.

Mr. President, I ask unanimous consent that releases from the Department of Labor concerning Philadelphia-type plans, Order No. 4, sex discrimination guidelines, and a memorandum describing OFCC accomplishments be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. JAVITS. Mr. President, some of the factors I have just discussed also apply to the refusal of the committee to provide for immediate transfer of "pattern or practice" suits from the Justice Department to EEOC. The committee was of the belief, and I share that view, that a transition period will be necessary to permit the Commission to hire the staff and gain experience in handling its new enforcement responsibilities. It would be a waste of time and resources if, during this transition, we should forgo use of the expertise gained by the Justice Department in prosecuting pattern or practice suits and the services of the trained lawyers in the Civil Rights Division. Hence, I support the provisions of the bill which permit transfer of pattern or practice suits after 3 years if the Attorney General and a majority of the Commissioners agree that the EEOC is ready to handle such suits.

The other controversial transfer provision in the bill is section 715, which gives the EEOC, rather than the Civil Service Commission final responsibility for assuring equal opportunity for Federal employees. This provision does not mean that the EEOC will take over the function now being performed by the Civil Service Commission in this area, but merely that it will have the final rulemaking and review power. The committee expects the EEOC to delegate much of its responsibility back to the Civil Service Commission. As the committee report states:

> Internal problems posed by regulating certain aspects of Federal employment practices through an agency not having the primary responsibility for personnel matters is avoided through the use of a rulemaking scheme, rather than flat application of the statute. This will permit the Equal Employment Opportunity Commission to delegate responsibility for certain aspects of the program to the Civil Service Commission, while retaining ultimate review authority and the power to issue appropriate guidelines and standards. It is expected that the Commission will, in exercising its rule-making powers in this area, work closely with the Civil Service Commission in developing orderly and efficient procedures for eliminating unlawful discrimination in Federal employment.

The committee report also summarizes very well the shortcomings of the existing program for Federal employees and I ask unanimous consent that a portion of the report—pages 8 to 9—dealing with this matter be printed in the RECORD.

COVERAGE OF SEX AS WELL AS RACIAL AND RELIGIOUS DISCRIMINATION

In conclusion, I would like to call attention to the fact that title 7, and hence this bill, covers discrimination in employment on account of sex as well as race, color, religion, and national origin. While much of the impetus for this bill comes from the need to end discrimination against racial and religious minorities, it is too often overlooked that sex discrimination is an equally urgent problem in America. The committee report calls attention to the regrettable fact that the proscription of sex discrimination in title 7 has been regarded in some circles as a kind of legislative accident. So far as this committee, and this Senator, are concerned, nothing could be further from the truth.

The committee report contains a table which demonstrates the truly invidious discrimination faced by women in the employment market today. I ask unanimous consent that the table be printed in the RECORD at this point.

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

NATIONAL AVERAGES OF ANNUAL WAGES FOR FULL-TIME, YEAR-ROUND WORKERS, 1968 [1]

Occupation	Men	Women
Professional and technical workers (includes doctors, lawyers, science, draftsmen, etc.)	$10,151	$6,691
Nonfarm managers, officials and proprietors (includes office managers, local, State and Federal Government officials; business owners, etc.)	10,340	5,635
Clerical workers (includes bookkeepers, file clerks, stenos, etc.)	7,351	4,789
Operatives (mostly factory workers)	6,738	3,991
Service workers (excludes private household workers; includes laundry workers, barbers, beauty operators etc.)	6,058	3,332
Salesworkers	8,549	3,461

[1] Latest figures available.

Source: Women's Bureau, U.S. Department of Labor.

Mr. JAVITS. Mr. President, it seems clear to me that despite such measures as the equal pay in employment, in the Fair Standards Labor Act, and inclusion of sex discrimination in title VII, there is a long way to go before discrimination on grounds of sex with respect to employment is truly ended.

Therefore, I believe that the firming up of the procedures and the strengthening of the procedures by which this may be done in the bill should be of most burning interest to all those who are supporting the drive for equality of women's rights. I hope very much that they will regard this bill as an element of implementation in that regard.

Thank you, Mr. President. I yield the floor.

EXHIBIT 1

MEMORANDUM FROM DEPARTMENT OF LABOR REGARDING OFCC ACCOMPLISHMENTS

On February 4, 1969, the U.S. Commission on Civil Rights presented to the Secretary of Labor an evaluation of the Federal Contract Compliance Program. This report from the Commission concluded that the Federal Contract Compliance program had not achieved its maximum potential in delivering EEO to minority groups primarily for these reasons.

1. Lack of staff resources; 2. lack of standards to contractors and to contracting agencies; and 3. lack of systematic approach to program administration.

Since receiving the Commission's evaluations and recommendations concerning the contract compliance program, the OFCC under the leadership of the Secretary of Labor, George P. Shultz and Secretary of Labor James D. Hodgson, and Assistant Secretary of Labor Arthur A. Fletcher, has instituted measures under which the Federal Contract Compliance program has achieved maximum capabilities to deliver Equal Employment Opportunities to minority groups:

1. Staff resources of the OFCC have tripled. In addition, the staff resources of the compliance agencies that are under the guidance of OFCC in administering the EO are also expected to triple. 2. Uniform and effective compliance standards have been de-

veloped for the benefit of the contractors, contracting agencies and minority groups. These standards include (a) *model-area-wide agreements* containing goals and timetables for the utilization of minorities in the construction industry; (b) *Order No. 4* containing the requirement of goals, targets and timetables for the employment of minorities in all industries other than construction; (c) *Guidelines on sex discrimination;* and (d) an affirmative action program requirement similar to Order No. 4 is under development to be applicable to sex discrimination. 3. The program is now very soundly and effectively administered under the leadership of Assistant Secretary Fletcher, who has become a national leader in the field of equal employment opportunity.

Outlined below is only a partial list of accomplishments thus far that have resulted from the above-increased resources, improved standards, and the leadership of Assistant Secretary Fletcher in the Department of Labor.

1. CONSTRUCTION INDUSTRY

In this important industry, there have been established area-wide agreements in 14 major cities. These area-wide agreements will create 25,000 jobs for minorities in the skilled crafts. There are now activities underway for establishing similar voluntary agreements in an additional 88 cities where interested parties have requested the assistance of the OFCC in establishing voluntary agreements in their hometowns. The agreements in these cities will produce a total of 175,000 jobs for minorities in the skilled crafts in this important industry.

2. OTHER INDUSTRIES

In other industries Order No. 4, calling for goals and timetables for providing minority opportunities, have resulted thus far in over 15,000 projected opportunities for minorities in five companies alone. For Fiscal Years 1971 and 1972, the systematic plans developed by the OFCC project 2½ million hiring and promotion opportunities for minority groups with Federal contracts.

NEWS RELEASE OF FEBRUARY 9, 1970

A national program for achieving equal employment opportunity in Federally-funded construction work in 18 U.S. cities was announced today by Labor Secretary George P. Schultz.

The Labor Department's 1970 compliance program for the construction industry calls for special efforts to develop equal employment opportunity programs in these cities including possible installation of "Philadelphia-type Plans" for those local communities which are unable to develop on their own initiative acceptable area-wide agreements.

The cities—covering all major regions of the country—are:

Atlanta, Boston, Buffalo, Cincinnati, Denver, Detroit, Houston, Indianapolis, Kansas City, Los Angeles, Miami, Milwaukee, Newark, New Orleans, New York, San Francisco, Seattle and St. Louis.

Based on indications of need and availability of limited resources, the Office of Federal Contract Compliance first would focus attention on six "priority" cities.

The six priority cities are Boston, Detroit, Atlanta, Los Angeles, Seattle and Newark.

Recognizing that underutilization of minority group members in some construction crafts has become a widespread problem, the Labor Department has examined several criteria in selecting the 18 cities.

The criteria include: labor shortages, availability of minority craftsmen, number of minorities, volume of Federal construction, minority representation in critical trades, labor market location, total area population, proportion of minorities in total population and cohesion of minority organizations.

Under the Philadelphia Plan concept, bidders on Federally-assisted construction projects exceeding $500,000 must submit affirmative action plans setting specific goals and timetables for hiring minority-group members in higher-paying crafts.

"We have made it quite clear that in solving these problems of the cities we favor voluntary, area-wide agreements to the imposition of specific requirements by the Government," Mr. Shultz said. "In fact provision for such agreements was written into the original Philadelphia Plan."

"I, therefore, urge contractors, unions, minority group organizations and local officials in these 18 cities to speed development of area-wide agreements that would make equal employment in construction work a reality."

Secretary Shultz said his agency "stands ready right now to help the parties in every possible way to reach their own agreements that will meet the requirements of Federal equal opportunity regulations."

He offered technical assistance to the parties, saying the Labor Department is able to provide them with appropriate guidelines and suggested ingredients for model area-wide agreements that will meet Federal requirements.

Parties interested in more details about model agreements or technical assistance are invited to write: Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210.

The compliance effort outlined by the Secretary is being carried out under provisions of Executive Order 11246. This Presidential directive prohibits discrimination in Federal contract work on the basis of race, color, religion, sex or national origin and requires contractors to take affirmative action to insure equal job opportunity.

MODEL AREAWIDE AGREEMENT

(NOTE.—The purpose of this "model" is to set forth suggested ingredients for areawide agreements. The language should not be considered "boilerplate", i.e., a standard or unvariable format. It is recognized that adjustments for local conditions will often need to be made. Nonetheless this model should provide a useful framework for communities endeavoring to work out areawide agreements designed to provide approvable affirmative action programs for equal employment opportunity.)

1. *Statement of Purpose:* The purpose of this Agreement is to increase minority employment and consequent union membership in the construction industry in this area. Unions, Contractors, Building Trades Council, General and Specialty Contractors Associations, participating community officials and other parties representing and concerned with the minority community pledge themselves to achieving this objective.

2. *Participants:* The participants in this program shall be the Building Trades Council, the General Contractors Association, the Specialty Contractors Association and other parties concerned with increasing minority employment in the construction trades. The other parties may include minority civic organizations, minority training and recruiting organizations, and public officials of state or local governments.

3. *Goals:* The plan should include specific numerical or percentage goals for new minority employment in the construction industry in the area for the coming year, and estimates of increases in future years. Specific increase goals should be established equitably among the trades, taking into account the wishes of minority persons seeking employment and the history and level of minority participation in the particular trades. Numbers to be agreed upon as overall goals shall be based on such factors as anticipated increases in the labor force, comparison with existing levels of apprenticeship programs, anticipated industry needs or other factors considered relevant by the parties.

4. *Scope:* This agreement covers all construction work performed by contractors who are members of the participating Association, and is not limited to Federal or Federally-assisted construction, and all work of any other contractors who may sign this Agreement.

5. *Implementation:* Development of the program and its policies should be undertaken jointly by labor and management with suitable participation and involvement of other parties to this Agreement. The Agreement should provide for an impartial chairman to resolve disputes in its administration. In the administration of the plan, it is recognized that because recruitment, counselling, classification of applicants' assignment to the trades and follow-up on the operation of the program is of special concern to the minority community that community should be extensively involved in these phases of the program. Administration may require a full time staff person or such other regular arrangements as the parties can work out. Staff persons should be sensitive to the problems of the minority community and knowledgeable in the construction trades.

6. *Elements in the Program:*

a. *Recruitment and counselling.* An extensive recruiting and counselling program shall be undertaken in the minority community, publicizing and advising the members of that community of the opportunities available under this program.

b. *Classification of minority applicants.* Minority applicants shall be classified on the basis of their experience as follows:

1. *Journeymen.* Persons who (1) are licensed by public authority in a trade, (2) have in fact functioned as a journeyman, (3) have performed at a level of skill equivalent to that of a journeyman, (4) have completed the Advanced Trainee Program under this agreement, (5) otherwise qualified. Journeymen shall be advised of their classification in writing. When covered by a labor contract they shall be paid the journeyman rate as established by collective bargaining and admitted to full union membership in accordance with established practice for non-minority employees.

2. *Apprentices.* Minority persons who have equivalent experience or meet existing valid qualifications and so desire they shall be eligible for admission to the relevant apprenticeship program on the same basis as others.

3. *Advanced trainee.* Persons not qualified as journeymen who have some related training, construction experience or its equivalent but do not meet the requirements of or seek admission as apprentices shall be eligible for placement in job-related training programs which seek to assist them in becoming journeymen within a reasonable period. They shall be paid at appropriate apprenticeship rate levels and may be advanced to Journeyman more rapidly than established apprenticeship time sequences if they reach higher proficiency levels more rapidly.

4. *Trainees.* Persons not qualified as journeymen or advanced trainees or apprentices, or who do not wish to be apprentices shall be eligible for employment and placed in job related training programs which seek to permit them to become advanced trainees within a year. Trainees shall be paid at a rate equivalent to that paid apprentices of comparable levels of proficiency and may be made advanced trainees within a year if they reach that level of proficiency.

c. *Fulfillment of Goals.* Employment of minority persons as apprentices, advanced trainees and trainees shall be counted toward fulfillment of the goals set forth in paragraph 3.

d. *Training Programs.* Training programs for trainees and advanced trainees shall be

established which shall provide, as nearly as may be practical, the education equivalent in quality and content to the training programs afforded apprentices.

e. *Probationary Periods.* Trainees or advanced trainees who, at the end of the year are not performing adequately for advancement may be allowed an additional six month period in each category to develop additional skill and experience.

f. *Assignment to trades.* The administrator or other official of the program will assign a minority group person to a designated trade after examination of background information and consultation with him and in accordance with the basic goals established in this agreement.

7. *Existing programs.* Existing outreach, pre-apprenticeship programs shall continue.

8. *Financing.* Costs of administration of the program shall be worked out among the parties to the agreement. Federal funds may be sought for training programs and other purposes.

9. *Subcontractors* of contractors party to this agreement shall be bound by this agreement.

10. *Provisions of collective bargaining agreements* or practices under collective bargaining shall be harmonized with this agreement as far as practical.

11. *Records and reports* of the operation of the program shall be kept by the Administrator on forms available from the Department of Labor. These reports and records will be available as a basis for evaluation of the program by private parties and Federal, state and local government agencies.

12. *Grievance Procedure:* A grievance procedure shall be established to resolve disputes concerning the interpretation or application of this agreement, any question arising thereunder, or any other question concerning the operation of this program. The first step shall be consultation and discussion by affected parties. If the dispute is not resolved, it may be submitted to the Committee for recommendation, or for final and binding decision, as the parties decide, or the matter may be referred to a neutral work stoppage, picketing, lockout or other arbitrator for a binding decision, if the parties so choose. There shall be no strike, work stoppage, picketing, lockout or other interference with construction activity during the term of this agreement with respect to any matter which is the subject of the procedures established in this section.

13. *Review, Modification and Duration:* This agreement shall last for one year or such longer period as the parties may agree, and shall be automatically renewed from year to year unless written notice of intention to terminate or modify the agreement is given to all parties not more than 90 nor less than 60 days prior to the annual renewal date hereof. Ninety days prior to the end of the first, and each succeeding year of this agreement, the parties shall review its effectiveness and the adequacy of the goals set forth herein.

14. *Compliance with Executive Order:* Participation in the program set forth in this agrement and good-faith performance by all parties thereunder, shall during the first year of the program, be evidence of general compliance with E. O. 11246 with respect to employment opportunity. This agreement or participation hereunder shall have no effect on the obligations of E.O. 11246 or any Federal or state statute, ordinance or regulation, with respect to *specific acts or incidents* which may violate the provisions of the Order or applicable law.

NOTE.—Recognition of the inter-relationship of minority construction industry contractors and matters involved in an area-wide agreement on equal employment opportunity is desirable. As agreed to by the parties the Administrator of the program may make available to the contractors a list of minority contractors, and assist minority contractors in securing technical assistance with respect to the contracting process in the construction industry.

July 9, 1970.

EQUAL EMPLOYMENT OPPORTUNITY PUSH LAUNCHED

An intensive summer program to assist cities in achieving "hometown" solutions for equal employment opportunity in the construction industry was announced today by Labor Secretary J. D. Hodgson. "There has been too much of a lag in this work and the big push is on," the Secretary said.

"Our skilled manpower reserves are tight but we are borrowing from other programs so that every one of these cities will get help in putting their good faith to work."

"The Labor Department intends," Secretary Hodgson said, "to give metropolitan areas every opportunity and assistance to work out agreements because experience shows that they provide broader employment opportunities than imposed solutions which are limited to Federal Government contractors.

"Where an area-wide agreement is not possible, the Labor Department will continue its policy of imposing solutions, such as the Philadelphia Plan and the Washington Plan.

"In Philadelphia, the Department is planning enforcement proceedings against contractors who are not making good-faith efforts to utilize minorities, as the Philadelphia Plan requires," Secretary Hodgson said. He noted that the Department of Health, Education and Welfare recently issued a show-cause against six Philadelphia contractors which may lead to debarment. The Department of Housing and Urban Development has issued one such show-cause.

About 30 Labor Department officials are being trained for the new program, Secretary Hodgson said. Seven of the newly-trained officials are already in the field providing technical assistance to municipalities, minority groups, unions and contractors.

Secretary Hodgson emphasized that this program was developed in response to requests for assistance from about 70 cities. These cities are in addition to the 18 announced on February 9. The Labor Department announced then that 18 cities would receive priority attention for compliance programs in the construction industry. Appropriate guidelines and suggested ingredients for model area-wide agreements meeting Federal requirements were provided.

The names of 73 additional cities and areas designated for assistance are carried at the end of this release.

The hometown solution aims at voluntary, area-wide agreements between contractors, unions and minority groups. It applies to both Federally-funded and private construction.

Secretary Hodgson reiterated the Department's desire to help the interested parties in these cities reach hometown agreements before the end of the year.

The Secretary of Labor said that while he is not satisfied with overall progress toward hometown agreements, he is happy to note several agreements have recently been consummated including one reached in Los Angeles the day before yesterday. Of the other 18 cities, he noted that hometown solutions have been reached in Denver, Boston and St. Louis.

Seattle is being assisted in assuring equal employment opportunity by a court order obtained by the Department of Justice at the request of the Department of Labor.

Chicago and Pittsburgh, which are not among the 18 cities, have also worked out hometown agreements.

The other cities in the group of 18 are Atlanta, Buffalo, Cincinnati, Detroit, Houston, Indianapolis, Kansas City, Miami, Milwaukee, Newark, New Orleans, New York and San Francisco.

"The Department's expanded program is being carried out by the Office of Federal Contract Compliance (OFCC) headed by Director John Wilks," the Labor Secretary said. "The assignment of these trained officials to the field will provide technical assistance so cities can develop suitable plans acceptable to city officials, the general public, the black minority, the unions and contractors."

The compliance effort outlined by the Secretary is being carried out under provisions of Executive Order 11246. This Presidential directive prohibits discrimination in Federal contract work on the basis of race, color, religion, sex or national origin, and requires contractors to take affirmative action to insure equal job opportunity.

The 73 additional cities and areas are:

1. Akron, Ohio.
2. Albany, N.Y.
3. Albuquerque, N.M.
4. Bakersfield, Cal.
5. Baltimore, Md.
6. Baton Rouge, La.
7. Birmingham, Ala.
8. Cairo, Ill.
9. Camden, N.J.
10. Carbondale, Ill.
11. Charleston, S.C.
12. Charlotte, N.C.
13. Cleveland, Ohio.
14. Columbus, Ohio.
15. Dallas, Tex.
16. Dayton, Ohio.
17. Des Moines, Ia.
18. East St. Louis, Ill.
19. Fort Worth, Tex.
20. Fresno, Cal.
21. Gary, Ind.
22. Gulfport-Biloxi, Miss.
23. Harrisburg, Pa.
24. Hartford, Conn.
25. Jefferson City, Mo.
26. Kansas City, Kan.
27. Las Vegas, Nev.
28. Lexington, Ky.
29. Little Rock, Ark.
30. Louisville, Ky.
31. Memphis, Tenn.
32. Minneapolis-St. Paul, Minn.
33. Mobile, Ala.
34. Mount Vernon, N.Y.
35. Nashville, Tenn.
36. New Haven, Conn.
37. Norfolk, Va.
38. Oklahoma City, Okla.
39. Omaha, Neb.
40. Pasco-Richland-Kennewick, Wash.
41. Peoria, Ill.
42. Phoenix, Ariz.
43. Portland, Ore.
44. Portsmouth, Va.
45. Providence, R.I.
46. Pueblo, Colo.
47. Reno, Nev.
48. Richmond, Va.
49. Rochester, N.Y.
50. Rockfort, Ill.
51. Rock Island, Ill.
52. Sacramento, Cal.
53. San Antonio, Tex.
54. San Bernadino-Riverside, Cal.
55. San Diego, Cal.
56. San Francisco Bay Area, Cal.
57. Seaside-Monterey, Cal.
58. Spokane, Wash.
59. Springfield, Ill.
60. Springfield, Mo.
61. Stockton, Calif.
62. Syracuse, N.Y.
63. Takoma, Wash.
64. Toledo, Ohio.
65. Topeka, Kan.
66. Trenton, N.J.
67. Tucson, Ariz.
68. Vallejo, Cal.
69. Ventura, Cal.

70. Waterloo, Ia.
71. Wichita, Kans.
72. Wilmington, Del.
73. Youngstown, Ohio.

ORDER NO. 4: U.S. DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

Part 60–2—Affirmative action programs

Pursuant to Executiv Order 11246, sections 201, 205, 211 (30 F.R. 12319), and 41 CFR 60–1.6, 60–1.28, 60–1.29, 60–1.40, Title 41 of the Code of Federal Regulations is hereby amended by adding a new Part 60–2 to read as set forth below.

Subpart A—General

Sec.
60–2.1 Title, purpose and scope.
60–2.2 Agency action.

Subpart B—Required Contents of Affirmative Action Programs

60–2.10 Purpose of affirmative action program.
60–2.11 Required utilization analysis and goals.
60–2.12 Additional required ingredients of affirmative action programs.
60–2.13 Compliance status.

Subpart C—Suggested Methods of Implementing the Requirements of Subpart B

60–2.20 Development or reaffirmation of the equal employment opportunity policy.
60–2.21 Dissemination of the policy.
60–2.22 Responsibility for implementation.
60–2.23 Identification of problem areas by organization unit and job categories.
60–2.24 Establishment of goals and timetables.
60–2.25 Development and execution of programs.
60–2.26 Internal audit and reporting systems.
60–2.27 Support of action programs.

Subpart D—Miscellaneous

60–2.30 Use of goals.
60–2.31 Supersedure.

AUTHORITY: The provisions of this Part 60–2 issued pursuant to sec. 201, E.O. 11246 (30 F.R. 12319).

Subpart A—General

§ 60–2.1 Title, purpose and scope.

This part shall also be known as "Order No. 4," and shall cover nonconstruction contractors. Section 60–1.40 of this chapter, Affirmative Action Compliance Programs, requires that within 120 days from the commencement of a contract each prime contractor with 50 or more employees and a contract of $50,000 or more develop a written affirmative action compliance program for each of its establishments. A review of agency compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the agency review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then sets forth detailed guidelines to be used by contractors and Government agencies in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity.

§ 60–2.2 Agency action.

(a) Any contractor required by § 60–1.40 to develop an affirmative action program at each of his establishments who has not complied fully with that section is not in compliance with Executive Order 11246 (30 F.R. 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60–2.10 through 60–2.31, the contractor is unable to comply with the equal employment opportunity clause.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance or other Government agencies, that the contractor has not developed an acceptable affirmative action program at each of his establishments, the contracting officer shall declare the contractor-bidder nonresponsible unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations: *Provided,* That during the preaward conferences provided for in § 60–1.6(d)(3), every effort shall be made through the process of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60–2.10 through 60–2.31 so that, in the performance of his contract, the contractor is able to meet his equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations and orders: *Provided further,* That when the contractor-bidder is declared nonresponsible more than once for inability to comply with the equal employment opportunity clause a notice setting a timely hearing date shall be issued concurrently with the second nonresponsibility determination in accordance with the provisions of § 60–1.26 proposing to declare such contractor-bidder ineligible for future contracts and subcontracts.

(c) Immediately upon finding that a contractor has no affirmative action program or that his program is not acceptable the contracting officer shall notify officials of the approprate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the Director, shall issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60–1.26(b), giving the contractor 10 days to request a hearing. If a request for hearing has not been received within 10 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

(2) During the "show cause" period of 30 days every effort shall be made by the compliance agency through conciliation, mediation and persuasion to resolve the deficiencies which led to the determination of noncompliance or nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency, with the prior approval of the Director, shall promptly commence formal proceedings leading to the cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts under § 60–1.26(b).

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

Subpart B—Required Contents of Affirmative Action Programs

§ 60–2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and, further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to increase materially the utilization of minorities at all levels and in all segments of his work force where deficiencies exist.

§ 60–2.11 Required utilization analysis and goals.

Affirmative action programs must contain the following information:

(a) An analysis of all major job categories at the facility, with explanations if minorities are currently being under-utilized in any one or more job categories (job "category" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Under-utilization" is defined as having fewer minorities in a particular job category than would reasonably be expected by their availability. In determining whether minorities are being underutilized in any job category, the contractor will consider at least all of the following factors:

(1) The minority population of the labor area surrounding the facility;

(2) The size of the minority unemployment force in the labor area surrounding the facility;

(3) The percentage of minority work force as compared with the total work force in the immediate labor area;

(4) The general availability of minorities having requisite skills in the immediate labor area;

(5) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(6) The availability of promotable minority employees within the contractor's organization.

(7) The anticipated expansion, contraction and turnover of and in the work force;

(8) The existence of training institutions capable of training minorities in the requisite skills; and

(9) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(b) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies. Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables. Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor. Where the contractor has not established a goal his written affirmative action program must specifically analyze each of the factors listed in "a" above and must detail his reason for a lack of a goal. In establishments with over 1,000 employees, or where otherwise appropriate, goals and timetables may be presented by organizational unit. The goals and timetables should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing his goals and timetables the contractor should consider the results which could be reasonably expected from his good faith efforts to make his overall affirmative action program work. If he does not meet

his goals and timetables, the contractor's "good faith efforts" shall be judged by whether he is following his program and attempting to make it work toward the attainment of his goals.

(c) Support data for the above analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data should include progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority status.

(d) Based upon the Government's experience with compliance reviews under the Executive order programs and the contractor reporting system, over the past eight (8) years, minority groups are most likely to be underutilized in the following six (6) categories as defined by the Employer's Information Report, EEO—1: officials and managers, professionals, technicians, sales workers, office and clerical, and craftsmen (skilled). Therefore, the contractor shall direct special attention to these categories in his analysis and goal setting.

§ 60—2.12 Additional required ingredients of affirmative action programs

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job categories.

(e) Establishment of goals and objectives by organizational units and job category, including timetables for completion.

(f) Development and execution of action oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Active support of local and national community action programs.

§ 60–2.13 Compliance status.

No contractor's compliance status shall be judged alone by whether or not he reaches his goals and meets his timetables. Rather each contractor's compliance posture shall be reviewed and determined by reviewing the contents of his program, the extent of his adherence to his program, and his good faith efforts to make his program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of suggestions and examples of procedures that contractors and federal agencies may use as guidelines for establishing, implementing, and judging an acceptable affirmative action program.

Subpart C—Suggested Method of Implementing the Requirements of Subpart B

§ 60–2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officers' attitude on the subject matter, assign overall responsibility and provide for a reporting or monitoring procedure. Specific items to be mentioned should include, but not limited to:

(1) Recruit, hire, and promote all job classification without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification.

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all other personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification.

(b) The contractor should periodically conduct analyses of all personnel actions to insure equal opportunity.

§ 60–2.21 Dissemination of the policy.

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report, and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions of minority employees, etc., in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, both minority and nonminority employees should be pictured.

(b) The contractor should disseminate his policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities for all positions listed.

(2) Incorporate the Equal Opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) When employees are pictured in consumer or help wanted advertising, both minorities and nonminorities should be shown.

(5) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

§ 60–2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company Equal Opportunity Programs. Depending upon the size and geographical alignment of the company, this may be his sole responsibility. He should be given the necessary top management support and staffing to execute his assignment. His responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's program.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies minority organizations, and community action groups.

(6) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to, the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations and community action groups.

(3) Periodic audit of hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure minorities are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in areas such as:

(i) Posters are properly displayed.

(ii) All facilities including company housing, are fact desegregated, both in policy and in use.

(iii) Minority employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(8) Supervision should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

§ 60–2.23 Identification of problem areas by organizational unit and job categories.

(a) An in-depth analysis of the following should be made, paying particular attention to apprentices and those categories listed in § 60–2.11(d):

(1) Racial composition of the work force.

(2) Racial composition of applicant flow.

(3) The total selection process including position descriptions, man specifications, application form, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities in specific work classifications.

(2) Lateral and/or vertical movement of minority employees occurring at a lesser rate (compared to work force mix) than that of nonminority employees.

(3) The selection process eliminates a higher percentage of minorities than nonminorities.

(4) Application and related preemployment forms not in compliance with local, State, or Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Man specifications not validated in

relation to position requirements and job performance.

(7) Test forms not validated by location, work performance and inclusion of minorities in sample.

(8) Referral ratio of minorities to the hiring supervisor or manager indicates an abnormal percentage are being rejected as compared to nonminority applicants.

(9) Minorities are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a racial disparity exists between length of service and types of jobs held.

(12) Nonsupport of company policy by managers, supervisors, or employees.

(13) Minorities underutilized or underrepresented in apprenticeship programs or other training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits employment of qualified minorities for professional and management positions.

(16) Lack of suitable transportation (public or private) to the workplace inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60–2.24 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing the size of his goals and the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in § 60–2.11(a).

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal setting process.

(c) Goals should be significant, measurable and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

§ 60–2.25 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate man specifications by division, department, location, or other organizational unit and by job category uisng job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job classification in all locations and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities, such requirements should be professionally validated to job performance.

(c) Approved position descriptions and man specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor should validate all selection criteria (Note Department of Labor Order of Sept. 9, 1968) (33 F.R. 44392, Sept. 24, 1968) covering the validation of Employment Tests and Other Selection Techniques by Contractors and Subcontractors Subject to the Provisions of Executive Order 11246.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups. Such techniques include but are not restricted to, unscored interviews, unscored application forms, arrest records, and credit checks. Where there exists data suggesting that such unfair discrimination or exclusion of minorities exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment Programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer qualified minority applicants. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority employees, clear and concise explanations of current and future job openings, position descriptions, man specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, follow-up with sources, and feedback on disposition of applicants.

(3) Minority employees, using procedures similar to (2) above, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities on the Personnel Relations staff.

(5) Minority employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with minority enrollments.

(8) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with the predominantly Negro colleges.

(ii) "After school" and/or work-study jobs for minority youths.

(iii) Summer jobs for underprivileged youth.

(iv) Summer work-study programs for faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed.

(9) When recruiting brochures pictorially present work situations, the minority members of the work force should be included.

(10) Help wanted advertising should be expanded to include the minority news media on a regular basis.

(f) The contractor should insure that minority employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) An inventory of current minority employees to determine academic, skill and experience level of individual employees.

(2) Initiating necessary remedial, job training and work-study programs.

(3) Developing and implementing formal employee evaluation programs.

(4) Being certain "man specifications" have been validated on job performance related criteria. (Minorities should not be required to possess higher qualifications than those of the lowest qualified incumbent.)

(5) When apparently qualified minorities are passed over for upgrading, require supervisory personnel to submit written justification.

(6) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system, and similar programs.

(7) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage minority employees to participate.

§ 60–2.26 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and time tables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60–2.27 Support of action programs.

(a) The contractors should appoint key members of management to serve on Merit Employment Councils, Community Relations Boards and similar oragnizations.

(b) The contractor should encourage minority employees to actively participate in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support Vocational Guidance Institutes, Vestibule Training Programs and similar activities.

(d) The contractor should assist secondary schools and colleges with significant minority enrollment in programs designed to enable graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority employees in local and minority news media.

(f) The contractor should support programs developed by the National Alliance of Businessmen, the Urban Coalition and similar organizations.

Subpart D—Miscellaneous

§ 60–2.30 Use of goals.

The purpose of a contractor's establishment and use of goal is to insure that he meet his affirmative action obligation. It is

not intended and should not be used to discriminate against any applicant or employee because of race, color, religion. sex or national origin.

§ 60–2.31 Supersedure.

This part is an amplification of and supersedes a previous "Order No. 4" from this Office dated November 20, 1969.

Effective date. This part is effective January 30, 1970.

Signed at Washington, D.C. this 30th day of January 1970.

GEORGE P. SHULTZ,
Secretary of Labor.
JOHN L. WILKS,
Director, Office of Federal Contract Compliance.

[F.R. Doc. 70–1411; Filed, Feb. 4, 1970; 8:50 a.m.]

LABOR DEPARTMENT ISSUES GUIDELINES TO BAR SEX DISCRIMINATION ON GOVERNMENT CONTRACT WORK

Guidelines to assure equal job opportunity for women on work paid for by Federal funds were announced today by Mrs. Elizabeth Duncan Koontz, Director of the Labor Department's Women's Bureau.

The guidelines, issued by Secretary of Labor George P. Shultz, become effective immediately. They apply to employment with Government contractors and subcontractors covered by Executive Order 11246.

This Presidential directive now prohibits discrimination because of sex as well as race, color, national origin and religion. It also requires affirmative action for achieving equality.

In announcing the guidelines, Mrs. Koontz said, "Equal employment opportunity is one of this Administration's priority goals. These guidelines will be vital in our efforts to insure equal job opportunity for America's women."

The guidelines, she added, constitute "a great step forward for those Americans whose talents have too often been wasted simply because they are women. This is a most appropriate milestone of women's progress. I am especially pleased that the guidelines are being issued as the Women's Bureau is celebrating its 50th anniversary."

Under the guidelines, covered contractors must maintain written personnel policies expressly indicating that there shall be no discrimination against employees on account of sex. Collective bargaining agreements on conditions of employment must be consistent with the guidelines.

The new guidelines also prohibit covered employers from:

Making any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment.

Advertising for workers in newspaper columns headed "Male" or "Female" unless sex is a bona fide occupation qualification.

Making any distinction between married and unmarried persons of one sex unless the same distinctions are made between married and unmarried persons of the opposite sex.

Denying employment to women with young children unless the same exclusionary policy exists for men.

Penalizing women in their conditions of employment because they require time away from work for childbearing. Whether or not the employer has a leave policy, childbearing must be considered a justification for leave of absence for a reasonable length of time.

Maintaining seniority lines or lists based solely upon sex.

Discriminatorily restricting one sex to certain job classifications and departments.

Specifying any differences for male and female employees on the basis of sex in either mandatory or optional retirement age.

Denying a female employee the right to any job that she is qualified to perform in reliance upon a State "protective" law.

The guidelines also specify that covered employers shall take affirmative action to recruit women to apply for those jobs where they have been previously excluded.

The guidelines point out that "women have not been typically found in significant numbers in management" and that "traditionally, few, if any, women" have been admitted into management training programs.

The guidelines state that an "important element of affirmative action shall be a commitment to include women candidates in such programs."

Secretary Shultz and John L. Wilks, Director of the Office of Federal Contract Compliance (OFCC), signed the document establishing the guidelines.

The guidelines will be used by Federal contracting agencies in their compliance activities under the supervision of OFCC. They were developed by OFCC and by a Labor Department-appointed panel which heard the opinions of companies, women's group representatives, and other interested persons.

The panel included Mrs. Koontz; Miss Elizabeth Kuch, Commissioner of the Equal Employment Opportunities Commission; Robert D. Moran, Administrator of the Labor Department's Wage-House and Public Contracts Divisions; and Mrs. Grace Gill Olivarez of Phoenix, Arizona.

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE EQUAL EMPLOYMENT OPPORTUNITY DEPARTMENT OF LABOR

Part 60–20—Sex discrimination guidelines

On January 17, 1969, proposed guidelines were published at 34 F.R. 758 to amend Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60–20. Persons interested were given an opportunity to file written data, views or argument concerning the proposals. Also, public hearings were held on August 4, 5, and 6, to receive oral presentations from interested persons.

Having considered all relevant material, 41 CFR Chapter 60 is hereby amended by adding a new Part 60–20 to read as follows:

Part 60–20—Sex discrimination guidelines

AUTHORITY: The provisions of this Part 60–20 issued Under Sec. 201, E. O. 11246, 30 F.R. 12319, and E. O. 11375, 32 F.R. 14303.

60–20.1 Title and Purpose.

The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11375 for the promotion and insuring of equal opportunities for all persons employed or seeking employment with Government contractors and subcontractors or with contractors and subcontractors performing under Federally-assisted construction contracts, without regard to sex. Experience has indicated that special problems related to the implementation of Executive Order 11375 require a definitive treatment beyond the terms of the Order itself. These interpretations are to be read in connection with existing regulations, set forth in 41 CFR Chapter 60, Part 1.

60–20.2 Recruitment and Advertisement.

(a) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

(b) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "Male" or "Female" will be considered an expression of a preference, limitation, specification or discrimination based on sex.

60–20.3 Job Policies and Practices.

(a) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

(b) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification. (Note: In most Government contract work there are only limited instances where valid reasons can be expected to exist which would justify the exclusion of all men or all women from any given job.)

(c) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not be considered to have violated these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

(d) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

(e) The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women, or deny men or women a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

(f) An employer must not deny a female employee the right to any job that she is qualified to perform in reliance upon a State "protective" law. For example, such laws include those which prohibit women from performing in certain types of occupations (e.g., a bartender or a core-maker); from working at jobs requiring more than a certain number of hours; and from working at jobs that require lifting or carrying more than designated weights.

Such legislation was intended to be beneficial, but, instead, has been found to result in restricting employment opportunities for men and/or women. Accordingly, it cannot be used as a basis for denying employment or for establishing sex as a bona fide occupational qualification for the job.

(g) Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female employee meets the equally applied minimum length of service

requirements for leave time, she must be granted a reasonable leave on account of childbearing. The conditions applicable to her leave (other than the length thereof) and to her return to employment, shall be in accordance with the employer's leave policy.

If the employer has no leave policy, childbearing must be considered by the employer to be a justification for a leave of absence for a female employee for a reasonable period of time. Following childbirth, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay, without loss of service credits.

(h) The employer must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age.

(i) Nothing in these guidelines shall be interpreted to mean that differences in capabilities for job assignments do not exist among individuals and that such distinctions may not be recognized by the employer in making specific assignments. The purpose of these guidelines is to insure that such distinctions are not based upon sex.

60–20.4 Seniority system

Where they exist, seniority lines and lists must not be based solely upon sex. Where such a separation has existed, the employer must eliminate this distinction.

60–20.5 Discriminatory wages

(a) The employer's wage schedules must not be related to or based on the sex of the employees. (Note. The more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions.)

(b) The employer may not discriminatorily restrict one sex to certain job classifications. In such a situation, the employer must take steps to make jobs available to all qualified employees in all classifications without regard to sex. (Example: An electrical manufacturing company may have a production division with three functional units: one (assembly) all female; another (wiring), all male; and a third (circuit boards), also all male. The highest wage attainable in the assembly unit is considerably less than that in the circuit board and wiring units. In such case the employer must take steps to provide qualified female employees opportunity for placement in job openings in the other two units.)

(c) To avoid overlapping and conflicting administration the Director will consult with the Administrator of the Wage and Hour Administration before issuing an opinion on any matter covered by both the Equal Pay Act and Executive Order 11246, as amended by Executive Order 11375.

60–20.6 Affirmative action.

(a) The employer shall take affirmative action to recruit women to apply for those jobs where they have been previously excluded. (Note. This can be done by various methods. Examples include: (1) including in itineraries of recruiting trips women's colleges where graduates with skills desired by the employer can be found, and female students of co-educational institutions and (2) designing advertisements to indicate that women will be considered equally with men for jobs.)

(b) Women have not been typically found in significant numbers in management. In many companies management trainee programs are one of the ladders to management positions. Traditionally, few, if any, women have been admitted into these programs. An important element of affirmative action shall be a commitment to include women candidates in such programs.

(c) Distinctions based on sex may not be made in other training programs. Both sexes should have equal access to all training programs and affirmative action programs should require a demonstration by the employer that such access has been provided.

60–20.7 Effective date.

This part is effective June 9, 1970. Signed at Washington, D.C. this 2nd day of June, 1970.

GEORGE P. SHULTZ,
Secretary of Labor.
JOHN L. WILKS,
Director, Office of Federal Contract Compliance.

STATUS OF UNFINISHED BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business, Senate Joint Resolution 1, not be laid before the Senate at 12 o'clock and that the Senate continue considering the pending business.

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

EQUAL OPPORTUNITIES ENFORCEMENT ACT

The Senate continued with the consideration of the bill (S. 2453) to further promote equal employment opportunities for American workers.

AMENDMENT NO. 976

Mr. DOMINICK. Mr. President, I call up my amendment No. 976 and ask that it be stated.

The PRESIDING OFFICER (Mr. HOLLINGS). The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. DOMINICK. 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 text of the amendment is as follows:

On page 53, beginning with line 17, strike out all through page 55, line 20.

On page 55, line 21, strike out "SEC. 11." and insert in lieu thereof "SEC. 10."

Mr. DOMINICK. Mr. President, a brief explanation of the amendment is in order because it was not read in full and without looking at the bill the amendment might not mean too much. The bill as now presented to the Senate for debate provides for transfer of all discrimination cases for Federal employees from the Civil Service Commission to the EEOC. This involves 3 million people. In addition, the bill also transfers within the jurisdiction of the EEOC all State and local employees, which consists of another 10 million people. Over and beyond that, the bill reduces from 25 to 8 the number of requisite employees an employer must have, in order to be subject to the bill. We estimate that this is another 6½ million people. So. we are, in effect, saying that we will increase the load on the EEOC by 19½ million people at a minimum.

Mr. President, we have already heard the discussions made by the distinguished Senator from New York and the distinguished Senator from New Jersey, pointing out that the Commission is already 2 years behind in trying to investigate and conclude the complaints which have been made under its existing jurisdiction.

Now we are considering this bill, with all good heart and with all good intent, a bill which I think has a great deal of merit in a number of places—and proposing to add to the committee's jurisdiction a block of new complaints that will arise from the 19.5 million additional people which will be placed within its jurisdiction.

It seems obvious to me that the work of the commission will be further bogged down and, if I may say so, this is borne out quite conclusively by the testimony of the chairman of the commission, as well as by testimony of other administration spokesmen who came before the committee.

With respect to this particular bill, what I am simply saying is that the Civil Service Commission now has jurisdiction over Federal employees, and that is where the jurisdiction should remain.

We should not have a personnel situation or a personnel grievance committee or a personnel management for Federal employees only on race, sex, color, and national origin. That would be the effect of the bill as now written. The bill provides that all the usual matters of grievance of Federal employees in connection with working conditions, with jobs, with promotions, with every aspect of personnel relationship, shall remain within the Civil Service Commission. But the bill excepts the charges of discrimination on the grounds I have mentioned.

It seems to me that the changes proposed by the bill will not render any good service to Federal employees but, in fact, will do them a disservice and seriously impair the President's program on equal employment.

President Nixon issued an Executive Order No. 11478 in August of 1969, a few days before the Civil Service Commission Chairman, Robert E. Hampton, testified before the Labor Subcommittee. That Executive order embodies a new concept, that of closely integrating equal employment and personnel management. It is based on the premise that to be effective, equal employment opportunities must be an integral part of the personnel-management system and must be built into it the every day actions taken by managers on the job.

I would think, Mr. President, that this would be self-evident when we think about it. How can we build in proper personnel management if we are going to take out the single element of discrimination and say, "Oh, no, that is on a different plane with a different commission for enforcement and personnel managers shall have no voice in it."

It would seem to me that this would be a grave mistake because progress has been made under Executive Order 11478 in assuring equal opportunity in the Federal service.

Heaven knows, we are not through with discrimination. There is still discrimination—we all know it—and we are

working on it. The question is: "Does the bill provide a mechanism for really trying to solve the problem?"

The results of a survey made as of November 30, 1969, shows an upward movement of minority groups in the Federal personnel system. For example, between 1967 and 1969, Negro employment rose from 14.9 percent to 15 percent of the total work force.

However, Negroes in GS–9 through 11 rose from 12,631 to 16,318, a 29-percent increase; and in grades 12 through 15 from 4,589 to 6,448, a 40-percent increase.

As I noted, Chairman Hampton testified just a few days after issuance of that Executive order. Since that time, the following substantive changes to enhance equal opportunity within the Government have been taken by the Civil Service Commission.

First, a new office has been established within the Civil Service Commission to provide leadership to government agencies;

Second, full-time equal employment opportunity representatives have been established in each of the Commission's 10 regional offices to carry equal employment opportunities directly to field installations;

Third, for the first time, agencies have been authorized to maintain statistics on minority employment on automatic data processing equipment and to monitor progress on a current basis.

One may recall that in prior years, it was considered discriminatory in and of itself to enter on anyone's application or job record what nationality, creed, color, or race he might be.

The fourth substantive change is that government-wide surveys of minority employment are being made every 6 months instead of every other year; and

Fifth, agencies have been directed to include evaluation of performance on equal employment opportunity in the rating of their supervisory personnel.

This is very significant. We have to evaluate supervisory personnel to determine whether they are directly or indirectly exercising discrimination in a field prohibited under our law.

The sixth substantive change is that an incentive awards program to stimulate supervisors, managers, and others for exceptional performance in this area has been instituted;

Seventh, new training programs have been established both on an individual and agency basis. These programs are significant in that it is the individual manager and supervisor who eventually will be the ones to make equal employment a reality because of their responsibility for hiring, developing, and advancing employees.

A number of other steps have been taken. Agencies have been directed to develop affirmative action plans, with specific details, and the Commission has already returned a large proportion of these to agencies for shoring up or for lacking the desired specificity.

The Commission has released to agencies, guidelines on ways to assure upward mobility for lower level employees. This is particularly important because around 20 percent of Federal employees are minorities, but those concentrated in the lower grades must be provided opportunity for the necessary training so they can qualify to move up the ladder.

The Commission is strengthening its inspection program aimed at agency equal employment opportunity programs and is requiring agencies to undertake self-evaluation programs and to provide progress reports.

The Commission is working on the development of a cooperative education program with predominantly Negro colleges to work out plans so that the work-study program will reach minority students and encourage them to come into the Federal Government.

As the central personnel agency, the Commission is in the best possible position to get to the heart of equal employment opportunity in the Federal service, and it is reviewing all its testing devices to assure that its examinations are a valid basis for selection of employees.

The Civil Service Commission feels it must take affirmative action to achieve equal employment opportunity and cannot rely upon complaints to point out problem areas. EEOC is necessarily complaint orientated.

That is not to say that the Civil Service Commission does not handle complaints. In July 1969, it installed a completely revised complaint procedure which provides for informal counseling for employees to resolve their problems at the lowest possible level, and this has worked out well. It has cut in half the number of formal complaints and has resulted in a significant increase in the number of corrective actions taken where employees have brought their problems to counselors for action. Third-party appeals examiners are provided where a complaint reaches the formal hearing stage so that a complaint is heard by a person having no connection with the agency involved in the dispute. This service, which the Civil Service Commission already provides, is essentially what the EEOC could provide if it had responsibility for the Federal program.

In addition, the direct coverage of Federal employees will add some 3 million employees to the work force covered by title VII. It does not make sense to remove this large a number of employees from the coverage of a workable, ongoing program where their rights are receiving adequate protection and to place them under an administrative process already as burdened as the EEOC is today.

Mr. President, I think it would be helpful at this point in the RECORD to indicate what some of the witnesses before our committee said on this particular subject. First I will turn to page 51 of the hearings record where we have a statement on that page from Mr. William Brown, who was chairman of the Equal Employment Opportunity Commission, not chairman of the Civil Service Commission.

This is what he said, talking about the Executive order which I have just mentioned in my previous statement.

> In the context of this significant step forward, it would not be desirable to transfer jurisdiction over these matters from the Civil Service Commission to the Equal Employment Opportunity Commission, especially if E.E.O.C. is now to assume cognizance over the employment practices of State and local governments, and employers of 8 or more persons. The added burden would simply be too great.
>
> A better course would be to afford the Civil Service Commission the opportunity to implement the new Order until such time as a reasonable assessment of its performance can be made, and if necessary, alternative systems considered.

That testimony was given before the committee on August 11, 1969. Since that time, as I have pointed out, the Civil Service Commission has implemented the order and has gone forward with procedures and systems which would eliminate discrimination as rapidly as possible. It will take quite awhile to get it all done, even though we would all like to get it done overnight. The Civil Service Commission is really moving ahead.

Mr. President, at this point I would like to read a few more statements from the record. First of all I will refer to the statement of Mr. Hampton, who was Chairman of the Civil Service Commission. His testimony starts at page 127 and can be read by all Senators when they get a chance. However, I want to emphasize a couple of things.

At the bottom of page 128, Mr. Hampton said:

> That progress is demonstrable and is probably greater than in any previous comparable period. At the end of 1967 (the latest date for which figures are available), almost one-fifth of total Federal employment was minority group. This was one-half million jobs filled by minority Americans. Also, the nonwhite proportion of the Federal work force was approximately 16 percent compared with 10.8 percent of nonwhites in the work force generally.

Turning to page 132 of his testimony, he said:

> Section 717 (a) and (b) of S. 2453 raise, in my judgment, serious legal questions which involve the authority of the Civil Service Commission under the Civil Service Act. The Civil Service Commission has statutory responsibility in connection with the employment process in the Federal Government and this makes it impractical to place oversight responsibility for equal employment in another agency.

That is the point I brought up at the very beginning: How difficult and complex this makes the situation as far as the Civil Service Commission is concerned.

He goes on to say:

> But, aside from the legal questions, the transfer of responsibility for equal employment to EEOC is bad in principle for the reasons I have cited.
>
> The EEOC is necessarily complaint oriented. The recipient and adjudication of complaints of discrimination is an important aspect of assuring equal employment opportunity, but it is far from the total program. Affirmative action—the moving out by agency heads and their managers to take the steps necessary to make equal employment opportunity a reality in every aspect of

personnel operations—is the road to meaningful equal employment opportunity.

Then, he goes on to point out what the Commission has done toward achieving these goals.

Mr. President, a question was raised in committee as to whether or not any of the minority groups were in the upper echelon of the Federal Government. This question was raised by the Senator from New Jersey. The question appears on page 135 and is replied to by Mr. Hampton on page 136.

In the first place, we have a minority commissioner for the first time in the eighty-six year history of this agency.

Secondly, I have an assistant for Equal Opportunity. He is sitting here on my right.

He then submits the study that was made. I call the attention of my colleagues to the study to show the proposed actions and positive recommendations that were made from that study which have now been implemented since 1969.

In short, what I am saying at the present time is that we have a lot of problems in trying to solve discrimination cases. As the manager of the bill knows full well I have been a very strong supporter of legislation on behalf of civil rights ever since I have held public office. There are an enormous number of problems connected with it, but one of them is the day-by-day dealings between people.

Where there is responsibility in a Commission, it has line authority from itself down to its various branches throughout the country. It seems to me they should have not only the right but also the responsibility of following through on discrimination cases. The matter was spelled out carefully in the 1964 act and great strides and great steps have been taken along this line since that time, and, as a matter of fact, since President Nixon took office.

I do not see how there can be a separation of all the personnel functions that go into the vast Federal service from the question of whether or not someone, because of race, creed, sex, color, or national origin, has been discriminated against. It just does not make any sense to me. When we have the chairman of the EEOC and the chairman of the Civil Service Commission both testifying it should not be transferred, why in the world do we go forward and do it?

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. WILLIAMS of New Jersey. Mr. President, very briefly, with great respect for the interest and concern of the Senator from Colorado in those matters where there is a question of enforcement of safety and health requirements of law, I do find that it is somewhat surprising for the Senator from Colorado to be advocating here that all of the aspects of the requirements of law be contained within one agency of our Government, the Civil Service Commission.

Here we have a mandate of law that states there shall be no discrimination for various reasons. That is a mandate that goes to the Civil Service Commission. When it comes to the enforcement of that mandate, as it is now, charges of discrimination can work up within the Civil Service Commission and be investigated, prosecuted, and judged, all within the Civil Service Commission.

I have had the great pleasure of listening to the Senator from Colorado as he analyzed the problems of being the investigator, the prosecutor, and the judge; this, in a sense, is part of what we are dealing with here.

I am not dogmatic in any degree to say that should not be part of the line of authority, but it does come as a surprise from the Senator from Colorado that this is the approach. Beyond that it would seem to me if this transfer does take place to the Equal Opportunity Commission, in terms of the consideration of charges of discrimination, the whole hearing process, and the basic quasi-judicial decisions would be made for or all employees coming under this law, and here would reside in one place the wisdom and the expertise to solve equal employment problems.

There is a great deal to be said for the affirmative thrust of the Civil Service Commission in the elimination of any aspect of discrimination, and the Executive orders call for affirmative action in this regard. There is nothing antithetical about a transfer of the quasi-judicial part of the investigation, hearing, and decision with that affirmative action and responsibility.

Section 715(b) clearly provides that:

The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions.

Under the rules and authority of the rulemaking provision, clearly the EEOC can provide for the program of affirmative action that deals with the elimination of discrimination in the Federal employment establishment.

The authority will reside in the EEOC to delegate to the Civil Service Commission such functions under this act as it desires.

I will say that there is a transitional period of 1 year before the effective date of the transfer from the Civil Service Commission to the EEOC. So there is that period of time for the adjustment. The second opportunity for adjustment is under the rulemaking authority of the EEOC.

Mr. President, I yield the floor.

Mr. DOMINICK. Mr. President, I just want to make a few comments, and then perhaps ask for a quorum call to see if we can have enough Senators present to have the yeas and nays ordered.

I am sorry, but not surprised, that the manager of the bill does not want to accept the amendment. I think he is making a mistake, and I think it is a fundamental mistake.

If Senators will look at section 715 of the bill, which my amendment would strike, it reads:

All personnel actions affecting employees or applications for employment . . . in military departments . . . in executive agencies . . . and in those portions of the government of the District of Columbia, and the legislative and judicial branches of the Federal Government having positions in the competitive service, shall be made free from any discrimination based on race, color, religion, sex, or national origin.

That is great. That is exactly what we want to do. There is no doubt about it whatsoever.

Subsection (b) then goes on to say, however:

The Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder . . .

I have never seen anything that is clearer than this saying that the EEOC is taking over primary responsibility in the personnel field for 3 million Federal employees who are already under the Civil Service Commission.

It can do nothing but create a clash between the two commissions. It can do nothing but interfere with the practical working operations of each employee, whether it be in an executive agency, a judicial agency, a legislative agency, or the military.

Why in the world should we take an ongoing program and say, "You are out, Civil Service Commission; we are going to put it in a new one that already is two years behind" and say further that the new Commission is going to do any good insofar as providing protection for those who are being discriminated against is concerned, I cannot understand.

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

Mr. DOMINICK. I am happy to yield.

Mr. ERVIN. I notice this language in the amendment on page 26, beginning on line 11: The term "employer" does not include the United States.

Mr. DOMINICK. That used to be in the 1964 Civil Service Act.

Mr. ERVIN. Yes. Do I understand the Senator from Colorado correctly as saying that, under the proposed transfer of power provided by the bill from the Civil Service Commission to the EEOC, that EEOC would have the power to process and decide complaints of discrimination in the civil service work force of the Federal Government?

Mr. DOMINICK. The Senator is correct.

Mr. ERVIN. The Senator from North Carolina is also correct, is he not, in saying that this would in effect be a proceeding either by an employee or an applicant for employment against a department or agency of the United States?

Mr. DOMINICK. Yes. It would be brought up by a complaint from an em-

ployee against a particular practice or a particular person, which would be filed with the EEOC.

Mr. ERVIN. Would not the same be true of an applicant for employment in the U.S. Government who would claim he was denied employment for one of the reasons covered by the 1964 Civil Rights Act?

Mr. DOMINICK. The Senator is correct, because it also refers to applicants for employment.

Mr. ERVIN. I direct the attention of the Senator to page 33, beginning with line 3. I will read this language for the purpose of laying a premise for a question:

"(2) After the Commission issues a complaint, it may, upon application by the person aggrieved, compensate such person for reasonable expenses in connection with the preparation for the hearing and in connection with participation in the hearings, including the cost of expert witness fees, transcripts, and copying. Not more than $1,000 will be allocated in any single proceeding to carry out the provisions of this paragraph. The Commission may perform the services for which the aggrieved party would otherwise seek reasonable expenses under this subsection.

If the bill should pass making the proposed transfer of jurisdiction of complaints of personnel already in the Government service or complaints of applicants for employment in the Government from the Civil Service Commission to the EEOC, then that would bring into play the section I have just read; would it not?

Mr. DOMINICK. I think it would, but I will yield to the manager of the bill on that point.

Mr. WILLIAMS of New Jersey. No; that does not apply. Those provisions of the bill that deal with the transfer of the discrimination questions now in the Civil Service Commission do not incorporate the earlier parts of title VII of the act.

Mr. ERVIN. Would the Senator from New Jersey be so kind as to inform the Senator from North Carolina what provision of the bill makes that plain, because, frankly, I have been so busy that I did not get a chance to read the bill until last night?

Mr. WILLIAMS of New Jersey. We will try to find that with precision.

Mr. ERVIN. It would seem to me this is clearly covered by the enforcement powers. I am not an expert on the bill, but I do want to be informed. I could not find anything that would distinguish between a complaint from a person already employed by the Government or seeking employment in the Government and any other person.

Mr. WILLIAMS of New Jersey. If the Senator will refer to page 26 of the bill, subparagraph (b), it describes the areas of employment that are covered by title VII of the bill. The term "employer" does not include the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia.

These are the words that exclude the Federal Government employment situation from the section that the Senator was reading from on page 33.

Mr. ERVIN. On page 26, on line 1, it states:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

That is sufficient to bring the Government of the United States into it.

Mr. WILLIAMS of New Jersey. No. There are other coverages. Here the words "governments, governmental agencies, political subdivisions" refer to a definition of persons and not employers.

Mr. ERVIN. Let us see. To get this back into context, then, would the Senator read how that entire section would read, as amended?

As I see it, the way that would read, with that put in there, would be that section 701(a) would read:

The term "persons" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

That would cover the Government of the United States, as far as the definition of persons is concerned, just as it would a State.

Mr. WILLIAMS of New Jersey. Except that it is excluded as an employer.

Mr. ERVIN. Well, that is a question.

Mr. WILLIAMS of New Jersey. I just gave the answer. The answer is that the Government of the United States is excluded.

Mr. ERVIN. Then how are you going to have the EEOC with jurisdiction, if the EEOC cannot proceed against the Government?

Mr. WILLIAMS of New Jersey. The provisions dealing with discrimination within the Federal Government are covered under a separate section, and that appears as section 715(a). It is a wholly separate, distinct section, under the heading "Nondiscrimination in Federal Government Employment." It stands on its own foundations in this legislation.

Mr. ERVIN. What page is that on?

Mr. WILLIAMS of New Jersey. That is on page 53. To come back, I did describe that accurately. This is a unit unto itself, this area of coverage.

In subsection (b) on page 54, the EEOC has its own separate, defined authority to enforce the provisions of the preceding subsection, 715(a).

Mr. ERVIN. This gives it the right to issue rules, regulations, orders, and instructions, as it deems necessary?

Mr. WILLIAMS of New Jersey. Yes.

Mr. ERVIN. Then does it have no enforcement provisions, no complaint procedure? Will they not have to issue a complaint to a department?

Mr. WILLIAMS of New Jersey. This is within the Federal Establishment, of course.

Mr. ERVIN. I know.

Mr. WILLIAMS of New Jersey. One agency of the Government is telling another. I would imagine that they would not end up in a court, with a separate agency.

Mr. ERVIN. I do not know. We had here quite a controversy between the Department of Justice and the Department of Labor, and the General Accounting Office. So there are controversies between governmental agencies.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield, so that we might ask for the yeas and nays?

Mr. ERVIN. I do not have the floor. The Senator from Colorado has the floor.

Mr. DOMINICK. I ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, I think the Senator from North Carolina has brought up a very interesting point. I do not think the bill is clear on it. I do welcome the record clarification of the Senator from New Jersey.

Section 715 itself, which deals with Federal employment, and which I am trying to have stricken insofar as it transfers authority from the Civil Service Commission to the EEOC, does not seem to me to be particularly clear as to which provisions of the basic law apply to its responsibility under this particular provision. But it certainly does say that the Commission has the authority to "issue rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply."

This, as far as I can see, puts the EEOC right directly into the personnel management of every single agency of the Federal Government, whether it is legislative, executive, military, or anything else; and it does seem to me that we have gone much too far in this respect.

Mr. ERVIN. It provides here expressly, at the bottom of page 54, on lines 17, 18, 19, and 20:

That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

Certainly that contemplates that an employee can file a complaint with the EEOC. Then it says:

Within thirty days of receipt of notice, given pursuant to subsection (b) or a previously issued Executive order, of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

In other words, it especially recognizes that either an employee or an applicant for Government employment can file a complaint, and that that complaint will be processed by the EEOC, and if the EEOC takes adverse action on his complaint, then he can bring a civil action.

I am unable to comprehend how that rules out the provisions on page 33, where the Commission has issued a complaint.

Mr. DOMINICK. I think the Senator has made a very good point.

Mr. ERVIN. In other words, it seems to me it certainly is unclear, at best, whether or not the Government is going to finance a Federal Government employee or applicant for employment to the extent of $1,000 in his controversy as to the reasons for his denial of employment.

Mr. DOMINICK. As to his denial of employment or as to his denial of promotion or as to his general working conditions. It could be anyone of those, so far as I can see.

I would be happy, however, to yield to the Senator from New Jersey for any further explanation he wants to give.

Mr. WILLIAMS of New Jersey. This all arose with the question of whether the provisions on page 33 of the bill do apply to section 715, and the answer is that they do not.

Am I responding to the inquiry as to the part of the bill about which the Senator from North Carolina was inquiring? Is that page 33?

Mr. ERVIN. Yes, page 33.

Mr. WILLIAMS of New Jersey. This provides for compensation to such person for reasonable expenses in connection with the preparation for the hearing, in connection with participation in the hearing. That does not apply to section 715, dealing with nondiscrimination in Federal Government employment. I thought that was the question we opened on, and the answer is clearly that the provisions on page 33 do not apply to Federal employment.

Mr. ERVIN. By all rules of construction page 54 necessarily implies that the EEOC has brought action against a department or agency of the Federal Government on the basis of complaints made by employees or applicants for employment on the grounds prescribed in the act. Then it says, in effect, that if EEOC takes favorable action, if it issues a complaint itself against the department, manifestly there is nothing to keep page 33 from applying on the hearing of that complaint. If they take unfavorable action, then the employee or applicant can go into the Federal court and sue the Government for employment and for back pay.

There are many other provisions in the bill, such as appointing counsel, in a one-sided manner, for parties involved in these things. I do not know whether or not they apply to the Government. If they do not apply to the Government, why should they not apply to the Government, just as they do to individuals?

Mr. WILLIAMS of New Jersey. I did not follow the reasoning of the Senator. The Senator said that manifestly the provisions on page 33 would apply, and I do not understand, when it is clear that they do not apply, how manifestly they can apply.

Mr. ERVIN. It reads:

After the Commission issues a complaint, it may, upon application by the person aggrieved, compensate such person for reasonable expenses in connection wtih the preparation for the hearing and in connection with participation in the hearings, including the cost of expert witness fees, transcripts and copying. Not more than $1,000 will be allocated in any single proceeding to carry out the provisions of this paragraph.

Page 54, which is a part of section 715, relating to nondiscrimination in Federal Government employment, reads:

The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: Provided, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

That is an express statement that the regulations must provide for the filing of complaints by employees or applicants for employment and that the Commission must process them. In the event that the Commission does not render favorable action, the employee or the applicant for employment has a right to bring suit in the Federal courts. This clearly implies that EEOC will issue a complaint if it is going to take action at all and conduct a hearing. Page 33, by its terms, would apply to that kind of complaint as well as to any other.

Mr. WILLIAMS of New Jersey. It has never occurred to anybody but the Senator from North Carolina that it did apply. It just plain does not apply.

Mr. ERVIN. I would say that despite my great veneration for the expert knowledge of the Senator from New Jersey on this subject, and despite the fact that I never had an opportunity to study this bill until after the Senate adjourned yesterday afternoon, I am left with the impression that under this bill it does apply, because the EEOC is going to have to issue complaints against the executive agencies and it is going to have to process those complaints against the executive agencies because that is expressly stated in the proviso on page 54.

Mr. DOMINICK. I may say to the Senator that I think he has brought up a most interesting point. But I would say that the distinguishing thing perhaps in support of what the manager of the bill has suggested is that on page 33, subsection (2), the key words are "after the Commission issues a complaint." On pages 54 and 55 I do not see any specific provision concerning a complaint by the Commission, although there are complaints by employees to the Commission, which is a different situation.

Mr. ERVIN. That may be a distinction. It is a distinction about as wide as the difference between tweedledum and tweedledee, the Senator from North Carolina submits. Is the Commission going to issue notices to the departments on the basis of complaints made by the Commission or on the basis of complaints made by the employee?

I invite the Senator's attention to the words following this proviso on lines 21, 22, 23, and 24:

Within thirty days of receipt of notice, given pursuant to subsection (b) or a previously issued Executive order, of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706-(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

It is crystal clear that it certainly contemplates a complaint filed by somebody.

Mr. DOMINICK. Yes.

Mr. ERVIN. The question in my mind is that under other provisions of the bill, as I construe it, if the individual files a complaint claiming discrimination, the Commission makes a preliminary investigation of it, and then it does not act on the basis of the individual's complaint but issues a complaint of its own.

Mr. DOMINICK. The Senator is correct on that.

Mr. ERVIN. So, under its power to adopt rules and regulations under section 715, it can provide exactly the same procedure in the case of Government employees and applicants for Government employment as it provides with respect to persons who seek or apply for private employment.

Mr. DOMINICK. As a matter of fact, I might say to the Senator that it seems pretty hard for me to determine how they are going to issue the so-called rules, regulations, orders, and instructions without having a complaint and some kind of hearing ahead of time so that the agency head will know why these orders are being put in, and under those circumstances I suppose we might stretch it. But the manager of the bill is saying it was not intended that be included; is that correct?

Mr. WILLIAMS of New Jersey. That is correct.

Mr. ERVIN. What will control is not the intention of the floor manager of the bill but what the plain words of the bill say.

Mr. DOMINICK. That is correct. It is another good reason why we should strike the whole of section 715, which I think is a monstrosity.

Mr. WILLIAMS of New Jersey. I still do not see how the provisions of the earlier part of the bill, as suggested by the Senator, apply to the section which stands on its own. There is no reference in section 715 at all to the section the Senator is talking about, except for the right to file suit.

Mr. JAVITS. Mr. President, will the Senator from North Carolina yield?

Mr. DOMINICK. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Colorado has the floor.

Mr. DOMINICK. I am happy to yield to the Senator from New York.

Mr. JAVITS. I think I see the concern of the Senator from North Carolina and would like to introduce two facts into the RECORD. One is the fact that when the scheme of legislation in section 715 is

read with the definition of the word "employer," which appears on page 26, lines 11 and 12, which excludes the United States or a corporation owned by the United States, this lends support to the argument made by the manager of the bill that section 715, and so forth, is an autonomous scheme for dealing with employees of the United States.

The second point which I understood the Senator to make, which is more relevant, that under the broad construction given to EEOC, it may issue orders or such instructions as it deems necessary and appropriate to carry out its responsibility. There is, as I understand it, the Senator's concern here about importing counsel fees and other provisions and parts of the bill which do not legislate for the Federal Government. In my judgment, I think this is important for the record, because the Senator is perfectly right to take the precaution in the interpretation of the whole of the section I have just referred to, as made by the manager of the bill, in which I join as the ranking member of the committee, so that the EEOC would not be within its power and would not be making rules, regulations, and orders carrying out its responsibilities if it simply imported the procedures of this bill respecting other employees to apply in cases involving Federal employees.

Mr. ERVIN. I thank the distinguished Senator from New York, but while page 26, section 701, subsection 2, and subsubsection (b) can be amended, it takes the United States out. Certainly the United States is brought back in by section 715's provision, and that certainly makes it implied that the EEOC has jurisdiction to issue orders to all the departments and agencies of the Federal Government, as well as the appropriate officers of the District of Columbia. But I hope that we are not giving the EEOC jurisdiction over the staffs of Senators.

Can the Senator from North Carolina receive the assurance of the Senator from New Jersey that the bill does not give the EEOC the power to supervise the employment of members of the staff of U.S. Senators?

Mr. WILLIAMS of New Jersey. The legislative branch is excluded.

Mr. DOMINICK. If I could interject there, could I say to the Senator from North Carolina that the legislative branch is included in employees, but only as to those under civil service.

Mr. WILLIAMS of New Jersey. That is correct.

Mr. DOMINICK. There are employees on the Hill not under civil service, and for that purpose——

Mr. ERVIN. Then I have the assurance, from that statement, that the word "individual" as used in section 701, subsection (a), and the words "government" and "governmental agencies," and so forth, do not include Senators of the United States; that their right to select their own staff members shall remain exempt from supervision by the EEOC.

Mr. WILLIAMS of New Jersey. It was stated by the Senator from Colorado that only those are covered who have positions in the legislative branch in the competitive civil service. The others are not.

Mr. ERVIN. That is true. That is undoubtedly so. That is expressed in section 715.

Mr. WILLIAMS of New Jersey. That is right.

Mr. ERVIN. I am also concerned about the definition of "persons" in section 701. We are not the Government of the United States. We are not exempt under that. We are individuals, I fear. We may be part of the Government.

Mr. WILLIAMS of New Jersey. Referring back to section 701, this operates under the term "employer," and not under the term "person." The term "employer" is then defined but does not include the United States as the employer but the people included within the legislative branch, which description is on page 54.

Mr. ERVIN. I am not the United States. I am an individual though, even if I happen to be a Senator of the United States.

Mr. WILLIAMS of New Jersey. Those people who are not competitive in the civil service.

Mr. ERVIN. That is section 715.

Mr. WILLIAMS of New Jersey. They are not covered. This is further evidence that section 715 should be separate and apart and on its own.

Mr. ERVIN. Then I understand the distinguished Senator to say that none of the provisions of the bill apply to the Federal Government or to any officer of the Federal Government except section 715.

Mr. WILLIAMS of New Jersey, That is right.

Mr. ERVIN. That satisfies me on that point. I am not asking these questions to be facetious but I have been so busy—as indeed has every other Member of the Senate—these harried days, that I could not get around to doing all my homework and I got to this just last night.

I thank the Senator for his information.

Mr. WILLIAMS of New Jersey. Mr. President, for myself, I would not have traded this legal exercise for anything.

Mr. DOMINICK. Mr. President, I am almost ready to vote. For the information of those who have not had the opportunity to be present, my amendment would leave in the Civil Service Commission the Federal employees. Instead of transferring that portion of personnel management to the EEOC, it would leave it in the Civil Service Commission.

This has been recommended by the Chairman of the EEOC, Mr. Brown, and by the Chairman of the Civil Service Commission, Mr. Hampton.

Why in the world we would take 3 million Federal employees and take one portion of personnel management and put it in a whole new agency, I cannot understand.

Mr. GRIFFIN. Mr. President, would the Senator answer a question for me if he is able to do so? What would be the rationale of the committee in exempting the employees of Senators? How would we justify that?

Mr. DOMINICK. I think that we did not get around to it at all. Actually, I would presume it is a pretty subtle distinction, because they are Federal employees, but they are not under civil service. The only ones covered were the employees under civil service. I do not see why they should have been exempted, but they were.

Mr. WILLIAMS of New Jersey. Mr. President, I believe that we covered those now covered under the Executive order. It was to be limited to that group, rather than broadening it beyond the Executive order as it exists.

Mr. GRIFFIN. Mr. President, it seems to me that it would be a difficult point to explain. Apparently we would be interested in bringing all other employers under the jurisdiction of the EEOC with respect to guarantees against discrimination, but we would leave ourselves free to discriminate.

Mr. JAVITS. Mr. President, if Congress votes for this legislation, I think we have a right to assume that Congress will in its personal conduct act in good faith. I think there is great jealousy over Executive interference with our functions and having any executive function in the executive department have the power to deal with the respective exercise of the Members of Congress. I respect that balancing of the two equities.

Even if we had done this in an advised way, I would still omit those employees because the separation of powers is, in my opinion, so critical that we should not jeopardize that concept with an executive department agency.

Mr. GRIFFIN. Mr. President, may I ask the Senator from Colorado, the sponsor of the amendment—since I did not hear all of the debate—do I correctly understand that the EEOC and the Civil Service Commission would favor the amendment of the Senator from Colorado?

Mr. DOMINICK. The Senator is correct. Chairman Brown of the EEOC and the chairman of the Civil Service Commission both testified in support of what my amendment would do—in other words, not transfer jurisdiction.

Mr. GRIFFIN. I certainly hope the amendment will be agreed to.

Mr. JAVITS. Mr. President, I wish to say just a word. The Senator from Colorado was very sparing in taking time. I am going with the committee on the whole bill.

My reason for supportng this particular provision of the bill is that there is, in my judgment, a proper case to be made for the fact that the agency which handles the personnel policies—namely, the Civil Service Commission—should not also be its own supervisor with respect to discrimination in employment.

It is for that reason that I saw some sense—I was not passionate about it, but I saw some sense—in giving rulemaking and the review power to the EEOC, so that it may make a consistent nondiscriminatory policy both in the Federal Government and in the State and local governments and for private employers.

I submit that the rationale of the committee's action is that it represents a sanction outside of the operation of the personnel policy of the Civil Service Commission itself. Experience has demonstrated, because of the very setup, that the personnel practice—the type of

examination, and so forth—seems to open the door to discrimination.

I, therefore, think this is a healthy correction that is being made.

Mr. ERVIN. Mr. President, I wish to make one observation. The EEOC can give an applicant for employment with the State government $1,000 to litigate his case. But under the explanation that has been given, they cannot give 1 cent to an applicant for Federal employment. I do not see why we make that discrimination between the Federal Government and the State agency.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the senior Senator from Washington (Mr. MAGNUSON). If he were present and voting he would vote "nay." If permitted to vote, I would vote "yea." Having already voted in the affirmative, I now withdraw my vote.

Mr. RANDOLPH (after having voted in the affirmative). On this vote I have a live pair with the Senator from Maine (Mr. MUSKIE). If he were present and voting he would vote "nay." I have already voted "yea." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PELL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Maryland (Mr. TYDINGS), and the Senator from Minnesota (Mr. MCCARTHY), are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Alabama (Mr. SPARKMAN), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are absent on official business.

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Utah (Mr. MOSS) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Utah (Mr. BENNETT), the Senator from Arizona (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), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Iowa (Mr. MILLER) is detained on official business.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from Iowa (Mr. MILLER), the Senator from South Dakota (Mr. MUNDT), the Senator from Illinois (Mr. SMITH), 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 37, nays 29, as follows:

[No. 340 Leg.]

YEAS—37

Allen	Ellender	Pearson
Allott	Ervin	Prouty
Anderson	Fannin	Russell
Baker	Fong	Saxbe
Bible	Fulbright	Scott
Boggs	Griffin	Smith, Maine
Cook	Gurney	Spong
Cooper	Hansen	Talmadge
Cotton	Holland	Thurmond
Curtis	Hollings	Williams, Del.
Dole	Jordan, Idaho	Young, N. Dak.
Dominick	Long	
Eastland	McClellan	

NAYS—29

Bayh	Hughes	Nelson
Brooke	Jackson	Packwood
Burdick	Javits	Pastore
Case	Kennedy	Percy
Church	Mansfield	Proxmire
Cranston	Mathias	Schweiker
Eagleton	McGovern	Stevens
Gore	McIntyre	Symington
Hart	Metcalf	Williams, N.J.
Hatfield	Mondale	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mr. Byrd of West Virginia, for.
Mr. Randolph, for.

NOT VOTING—32

Aiken	Hruska	Muskie
Bellmon	Inouye	Pell
Bennett	Jordan, N.C.	Ribicoff
Byrd, Va.	Magnuson	Smith, Ill.
Cannon	McCarthy	Sparkman
Dodd	McGee	Stennis
Goldwater	Miller	Tower
Goodell	Montoya	Tydings
Gravel	Moss	Yarborough
Harris	Mundt	Young, Ohio
Hartke	Murphy	

So Mr. DOMINICK's amendment No. 976 was agreed to.

Mr. DOMINICK. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD of West Virginia. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ANNOUNCEMENT OF BRIEFING ON SOVIET SUBMARINE BASES IN CUBA

Mr. CHURCH. Mr. President, at 2:30 tomorrow afternoon the Foreign Relations Subcommittee on Western Hemisphere Affairs, of which I am chairman, will receive an intelligence briefing on the reports we have had of the construction of a Russian submarine base in Cuba.

Senators will recall that the last reports we had of Soviet military activities in Cuba led to one of the crucial crises of our generation.

I do not know whether the present situation is of such significance as the earlier confrontation in Cuba, but I believe that it is essential that Senators know precisely what the situation is, so that we need not rely on press reports and rumors.

The briefing tomorrow afternoon will be conducted by members of the Defense Intelligence Agency in room S-116 at 2:30 p.m. and any Senator who is interested is invited to attend.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the text of an editorial on this subject, published in this morning's New York Times.

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

SOVIET SUB BASE IN CUBA?

It is curious that neither Moscow nor Havana has reacted publicly to the White House warning against construction of a Soviet strategic submarine base in Cuba. On occasion in the past the Soviet Government has been quick to deny much less serious accusations appearing even in obscure publications. But in this case, when a White House spokesman raised the possibility that the Kremlin had secretly begun work that would violate the spirit, if not the letter, of the 1962 Khrushchev-Kennedy agreement, there has not been a word of Soviet comment.

Pessimists will conclude that this silence confirms Washington's worst fears. Optimists will argue that Soviet leaders are taking another look at whatever plans may be underway for the Cuban port of Cienfuegos and have not yet decided what to do in the light of the White House statement.

The world was probably closer to thermonuclear war during the Cuban missile crisis of October 1962 than at any time before or since. In reporting the agreement which had resolved the crisis, President Kennedy said that the Soviet leaders had promised to remove all "weapons systems capable of offensive use" and "to halt the further introduction of such systems into Cuba." In return the United States agreed to lift its naval quarantine and to "give assurances against an invasion of Cuba." President Kennedy was thinking of land-based missiles capable of delivering nuclear weapons, but submarines having similar missiles and nuclear weapons are also "weapons systems capable of offensive use."

Violations of this understanding, coming on top of the current Soviet violations of the cease-fire pact in the Suez Canal zone, would certainly undermine any confidence in agreements with the Soviet Union. In this situation any Soviet move to create a submarine base in Cuba would only intensify tension between the two superpowers and strengthen retrogressive forces in both countries that would intensify the arms race.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 3730) to extend for 1 year the act of September 30, 1965, as amended by the act of July 24, 1968, relating to high-speed ground transportation, and for other purposes.

The message also announced that the House had passed, without amendment, the joint resolution (S.J. Res. 110) to

amend the joint resolution entitled "Joint resolution to establish the first week in October of each year as National Employ the Physically Handicapped Week," approved August 11, 1945 (59 Stat. 530), so as to broaden the applicability of such resolution to all handicapped workers.

The message further announced that the House had passed the bill (S. 3154) to provide long-term financing for expanded urban mass transportation programs, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 14485) to amend sections 501 and 504 of title 18, United States Code, so as to strengthen the law relating to the counterfeiting of postage meter stamps or other improper uses of the metered mail system.

The message further announced that the House had agreed to the amendments of the Senate to the joint resolution (H.J. Res. 236) authorizing and requesting the President of the United States to issue a proclamation designating the week of August 1 through August 7 as "National Clown Week."

The message also announced that the House had agreed to the amendments of the Senate to the joint resolution (H.J. Res. 1154) authorizing the President to proclaim National Volunteer Firemen's Week from September 19, 1970, to September 26, 1970.

The message further announced that the House had agreed to the amendments of the Senate to the concurrent resolution (H. Con. Res. 675) expressing the sense of the Congress with respect to the conquest of cancer as a national crusade.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 17604) to authorize certain construction at military installations, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. RIVERS, Mr. HAGAN, Mr. CHARLES H. WILSON, Mr. NICHOLS, Mr. DANIEL of Virginia, Mr. BRAY, Mr. CLANCY, Mr. KING, and Mr. FOREMAN were appointed managers on the part of the House at the conference.

The message further announced that the House had passed a bill (H.R. 18126) to amend title 28 of the United States Code to provide for holding district court for the eastern district of New York at Westbury, N.Y., in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 3558) to amend the Communications Act of 1934 to provide continued financing for the Corporation for Public Broadcasting, and it was signed by the Acting President pro tempore (Mr. ALLEN).

EQUAL OPPORTUNITIES ENFORCEMENT ACT

The Senate continued with the consideration of the bill (S. 2453) to further promote equal employment opportunities for American workers.

AMENDMENTS NO. 978

Mr. DOMINICK. Mr. President, I call up my amendments No. 978.

The PRESIDING OFFICER. The amendments will be stated by the clerk.

The legislative clerk proceeded to read the amendments.

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

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

The amendments (No. 978) are as follows:

On page 27, insert between lines 22 and 23, the following:

"SEC. 4. (a) Subsections (g) and (h) of section 705 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e–4) are amended to read as follows:

"'(g) The Commissions shall have power * * * (6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

"'(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court: *Provided*, That the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission.'"

On page 27, line 23, strike "SEC. 4. (a)" and insert in lieu thereof "SEC. 4. (b)"; in line 25, strike "2000e–5(a)–(d)" and insert in lieu thereof "2000e–5 (a)–(e)."

On page 31, beginning with line 23, strike all through line 19, page 43, and insert in lieu thereof the following:

"(f) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or further efforts of the Commission to obtain voluntary compliance."

On page 43, beginning with line 20, strike all through line 12, page 44, and insert in lieu thereof, the following:

"(c) Subsections (f), (h), (j), and (k) of section 706 of such Act are redesignated as subsections (h), (j), (l), and (m), respectively.

"(d) Subsection (g) of section 706, is redesignated as subsection (i) and a new subsection (g) is inserted in lieu thereof as follows:

"'(g) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.'"

"(e) Subsection (i) of section 706 of such Act is redesignated as subsection (k) and subsection (g) of such Act as redesignated as subsection (i) is amended to read as follows:

"'(i) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).'"

On page 49, strike out lines 6 through 18.

On page 49, line 19, strike out "SEC. 8" and insert in lieu thereof "SEC. 7".

On page 53, line 6, strike out "SEC. 9" and insert in lieu thereof "SEC. 8".

On page 53, line 17, strike out "SEC. 10" and insert in lieu thereof "SEC. 9".

On page 51, beginning with line 20, strike all through line 2, page 53; in line 3, strike "(h)" and insert in lieu thereof "(f)".

On page 55, line 5, strike "(q)"; strike lines 8 and 9; in line 10, strike "(e)" and insert in lieu thereof "(d)"; in line 15, strike "(f)" and insert in lieu thereof "(e)"; in line 17, strike "(g)" and insert in lieu thereof "(f)"; strike out lines 21 through 25.

Mr. DOMINICK. Mr. President, I should tell my colleagues who are present that this is really a very significant amendment. What it does is to say that we are not going to give EEOC cease and desist powers. This amendment does, say, however, that the Commission can go into court, instead. This insures we do not have an executive agency going around the country, issuing cease and desist orders which have the effect of trying to enforce their own investigations in very ticklish and very delicate

situations. Instead, the Commission will have to go to court, where there will be full proceedings of the court, rights of review, and rights of the Administrative Procedure Act.

I do not intend to be extremely long in my discussion of the amendment. I would guess that we would get a vote soon. As a result, I ask for the yeas and nays on my amendment at this point.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, I shall now go into a little lengthier explanation of my amendment.

Some 6 years ago Congress enacted legislation making it unlawful to deny employment to an individual because of race, color, religion, sex, or national origin. This legislation was predicated on a belief and conviction that we must afford equal employment opportunity to all of our citizens, and this is a thesis which I thoroughly subscribe to. However, we still have job discrimination.

As Senators know, the agency charged with enforcing the law against this kind of discrimination was not given power commensurate with its responsibility, and, if the policy declared by Congress is to be effective, the inadequacy must be remedied. The question is: How do we do it?

The bill before us would provide the Equal Employment Opportunity Commission with authority to issue a cease and desist order against an employer found to be engaging in an unlawful employment practice.

Where the Commission cannot obtain voluntary compliance, it will issue a formal complaint against the respondent. The matters at issue will thereafter be litigated at a formal hearing before a Federal trial examiner, in the same manner that NLRB complaints are litigated.

Orders of the Commission may be reviewed by the Court of Appeals upon a petition by a party aggrieved by the final order. If no such petition is filed within 60 days, the Commission may obtain a court decree upon application, without review of the proceedings by the Court of Appeals. If neither of the above occurs within 90 days, any person entitled to relief may obtain a court decree without review of the Commission's proceeding.

The committee report on the bill states that this means of enforcement was adopted because it is the type utilized by other Federal regulatory agencies and most of the States. It also states that cease and desist powers insure a quicker and more unified approach to the problem.

I do not agree with this conclusion, as stated in the report, and I so stated in my individual views. I might also add that a number of witnesses before the committee did not agree with that conclusion.

The thrust of my amendment as we have it before us now is to provide for trial in the United States District Courts wherever the EEOC has investigated a charge and found reasonable cause to believe that a violation has occurred.

Let me interject at this point, because I think it is appropriate: The EEOC, on investigatory matters, is now 18 to 24 months behind. The bill as it is presented to us now, after adoption of my last amendment, still adds about 16.5 million people to its jurisdiction. The bill as it is now presented to us also asks that the EEOC, already 18 to 24 months behind, should now set up a whole new trial examiner department, and start the actual adjudication of these complaints as well as the investigation of these complaints.

Mr. President, as compared to about 100 new trial examiners, not counting the staff which would be needed, if we go into the system I am suggesting we need about 50 trial lawyers for EEOC. But we have 93 Federal District Courts in this country, with 326 judges now active and 398 authorized already in operation—people with judicial reputations, with reputations for fairness, discretion, and impartiality—and it seems to me that it makes far more sense, that it is going to be much more rapid, and that it will be a far better system to go through the courts, as opposed to the cease and desist order procedure.

The PRESIDING OFFICER (Mr. HUGHES). The Chair inquires whether the Senator from Colorado would like his amendments considered en bloc.

Mr. DOMINICK. Yes; I ask unanimous consent that it be considered en bloc.

Mr. JAVITS. Mr. President, will the Senator withhold that? I would like to examine the amendments.

Mr. DOMINICK. Yes, no problem. The amendment is No. 978.

Mr. GRIFFIN. Mr. President, would the Senator from Colorado permit me to ask a question at this point?

Mr. DOMINICK. Yes, I should be delighted.

Mr. GRIFFIN. On August 8, 1969, the Senator from Vermont (Mr. PROUTY), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Oklahoma (Mr. BELLMON), the Senator from Pennsylvania (Mr. SCHWEIKER), and I introduced a bill (S. 2806) which represented the position of the administration on the matter of how to provide further enforcement powers for the EEOC.

It is my understanding that the bill was drafted either by or in cooperation with the chairman of the EEOC, Mr. Brown.

Is the amendment which the Senator from Colorado proposes now substantially in accord with that bill, does the Senator know?

Mr. DOMINICK. The Senator is correct, and it is in accord with that bill insofar as the bill was restricted to enforcement procedures, which I believe it was.

That bill was brought up in committee, but it met the fate of many other bills in that committee, and simply did not receive majority support. I believe, as a matter of fact, that the distinguished Senator from New York—no, I guess it was introduced by the Senator from Michigan, that is correct. The Senator from New York introduced another bill along somewhat similar lines.

Mr. GRIFFIN. Senator PROUTY, I believe, as a member of the committee, introduced it, along with the junior Senator from Michigan, and others. The thrust of the amendment now offered by the Senator from Colorado is in accord with that bill, as do I understand?

Mr. DOMINICK. It is in accord with that bill, and it is in accord, I might add, with the very strong position of the administration, the position of the board of the EEOC, and the position of the Justice Department.

Mr. GRIFFIN. I thank the Senator.

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

Mr. DOMINICK. I yield.

Mr. JAVITS. I did not get the list of Senators, but I note that the minority leader is a cosponsor of the bill itself, as introduced by the Senator from New Jersey (Mr. WILLIAMS), so that really covers both sides of the issue, with Senator SCOTT on both of them.

Mr. DOMINICK. Mr. President, as I have said, the main thrust of my amendment is to go back to the original idea that the EEOC, the administration, and a lot of the rest of us had, which is to go through the courts instead of setting up this hearing examiner procedure.

Under this amendment, the Commission, if unable to obtain voluntary compliance with the law, may bring its own direct action against the respondent in an appropriate Federal District Court.

In other words, the Commission can do this itself.

The Commission may also request the Federal District Court for temporary or preliminary injunctive relief pending final disposition of the charge.

Obviously, it is not very difficult, as we all know, to obtain a preliminary injunction or a temporary restraining order. You can get it, practically, in half an hour. In the case of a preliminary restraining order, you can do it ex parte; with a temporary injunction, of course, you have to go in and have some hearings. But it is not a very difficult forum for obtaining effective, prompt relief where a situation may be critical.

If the court, after hearing the case, finds a violation has occurred, it may enjoin the respondent from engaging in such unlawful acts and may order such affirmative relief as it deems appropriate, including but not limited to the reinstatement or hiring of employees with or without back pay. Promotion of an individual may also be ordered if this type of discrimination is found.

An appeal from a District Court's order would go directly to an appropriate court of appeals, and the order of the court of appeals would be reviewable only by the U.S. Supreme Court.

The Attorney General's authority to bring actions involving patterns or practices of discrimination would not be changed. The Commission would be required to notify the Attorney General of such cases and also of cases the Commission is instituting in Federal District Court. So there would be coordination between them. The Attorney General may intervene in the latter type of a case as well as in a suit filed in Federal District Court by an aggrieved person.

So we are preserving the coordination, and at the same time we are making sure that we are not disturbing the pattern of practice cases which the Attor-

ney General has been handling himself through the Justice Department. Wherever an aggrieved person comes in and files a suit, the action is retained where the Commission cannot obtain voluntary compliance but refuses to bring an act on in Federal District Court on behalf of the aggrieved person.

The Commission has complete authority to decide which cases to bring to Federal District Court, and these cases will be litigated by the Commission attorneys. Once a Federal District Court has issued a decision and order in a case, however, on litigation of an appeals nature, a U.S. Court of Appeals or the U.S. Supreme Court will be conducted by the Attorney General.

This approach preserves the expertise and independence from changing shifting political winds resulting from enforcement through administrative processes, and is capable of easy adaptability within EEOC's existing structure. In aditon, however, it contemplates vigorous enforcement in the Federal courts where speedy redress can be obtained with due process.

I believe that other reasons supporting the adoption of my amendment include the following:

Proceedings showing immediate results will be able to be commenced shortly after enactment, particularly in view of the authority to the EEOC to seek immediate temporary or preliminary injunctive relief from Federal courts which will eventually try the cases on their merits. By contrast, it will take the EEOC many months to commence administrative proceedings under decisionmaking and enforcement authority and would probably take 2 or 3 years before any meaningful number of court decisions could be obtained ruling on or enforcing the administrative decisions of the EEOC.

Mr. President, I can go farther than that. In the hearing records that we have before us, it was anticipated that it would take 18 months to 2 years to set up the necessary trial examiners in order to go into the kind of processing on cease and desist orders provided under the bill. We would not have to wait that long under my amendment. We could go directly into court and get such relief as the court may authorize.

EEOC will have complete freedom to determine which cases should be taken into Federal court after conciliation attempts failed, with an aggrieved person retaining the right to commerce his own action in Federal court if the EEOC dismisses his charge. The Civil Rights Division of the Justice Department will have no control over what cases are litigated, although it will retain the right to decide which cases should be appealed to the courts of appeals where the EEOC loses a case in whole or in part in the District Court proceedings.

A particular proceeding will probably be substantially shortened by the direct appeal route from the Federal District Court which tried the case to the court of appeals, rather than following the time-delaying route of administrative hearings before a trial examiner and additional proceedings before the Commission itself before access to the court of appeals can be obtained.

Under the traditional procedure of the so-called independent board, which is not independent in this case, what you do is have an investigation by the EEOC staff; then a complaint is filed; then that complaint is heard by an EEOC trial examiner. After that, you have a right to go to the commission for a full review of the trial examiner's report. After that, the case goes to the court of appeals. The administrative procedures alone, as we well know, in the course of the conduct of NLRB and many other regulatory agencies, are time consuming.

In addition, there is the feature which I have been fighting, as the Senator from New Jersey has said, over and over and over again, and that is that I do not think that an executive agency of Government should be the investigator, the prosecutor, the trial judge, and the judicial review board before you ever get to a court.

It seems to me that it smacks far too much of the old star chamber procedure of the English common law from which we have been trying to get away ever since—or, I should say, which the English common law got away from.

The EEOC will not lose the right to exercise its expertise in the fashioning of remedies for alleged violations, as it may urge the courts any proposed remedies which might have been ordered in its own right if it retained decisionmaking legality of such remedies would be determined when the court of appeals reviewed the EEOC's order, and it is this same forum which will pass upon the propriety of the remedy under my amendment when the action of the Federal District Court is reviewed.

It is true that there is a substantial backlog of cases awaiting trial in many Federal district courts. However, I am convinced that the backlog of EEOC cases in the courts will not approach the backlog of cases before the Commission which would be created by requiring the EEOC to review every litigated case in the country before enforcement in the courts of appeals could be sought. In addition, under the proposal which I have submitted, the EEOC would be authorized to seek temporary or preliminary relief when investigation indicates that it is necessary. These cases would be expedited and the immediate effects of the results could make an impact upon employment practices.

Further, it is my impression that companies and labor organizations and their legal counsel are much more impressed by precedents established in our Federal court system than by precedents of administrative agencies. Accordingly, as court precedents are established under my amendment, I believe the result will be a substantially higher increase in the number of respondents complying with court decisions or entering into meaningful conciliation agreements with the Commission, rather than appealing cases lost in Federal district court. In addition, I envision a much larger number of cases being settled by agreement without litigation where the alternative is a Federal court trial by respondents who would take their chances in drawn-out administrative proceedings, even where the precedents were clear.

There is also good reason to believe that the success of conciliation efforts would be enhanced by these enforcement procedures. Rather than substantially increase the number of cases which must be pursued in the courts if at all, there is a strong likelihood that the knowledge that failure to conciliate can result in direct court action by the EEOC will provide the necessary inducement to employers to settle matters rather than to litigate.

Finally, the rights of all parties—employers as well as employees—are better protected, procedural safeguards are assured, and an impartial determination of the issues can be made when differences are resolved and the record is made in a Federal court.

We have established a great number of regulatory agencies in the past. We have done this largely on the basis that very intricate situations are going to be involved and that we should have a group of experts doing this.

In this case what we are talking about is discrimination. While discrimination can happen both directly and indirectly, and that it can sometimes be difficult even to ferret out, these instances, by and large, are going to be brought to the Commission on complaint of an aggrieved party. So we do not have a comparability, so far as I can see, with the problems of the NLRB or the SEC or the Federal Trade Commission or any of the other regulatory agencies.

These cases will be coming in, and they will be coming in in numbers, substantial numbers, because we all know that discrimination is still going on.

It strikes me that where we have of necessity a complaint-oriented agency such as this, we should have a judicial review of whatever order that Commission deems it should have. We should have a judicial review through the Court of Appeals; but in order to make the decision—I will put it that way—of a Commission subject to initial review and rather prompt action, we will do better, I believe, in the Federal district courts than we will elsewhere.

Let me state again the reasoning, and I will be very brief. This Commission is now 18 to 24 months behind. By this bill, if it is passed as it is now before the Senate, we will be adding 16.5 million people to its jurisdiction.

The Commission has estimated that it would take them almost 2 years to be able to set up a trial examiner procedure, and they have estimated that substantial staffing of trial examiners as well as new lawyers would be needed in order to conduct the adjudication proceedings before the Commission itself.

We now have in existence 93 Federal district courts, with 398 authorized judges for those courts. Wherever there is an investigatory proceeding which makes the Commission believe there is a legitimate case, they can go right into one of those courts, which are already set up, already staffed, and already paid for.

It just does not seem to me to make

very much sense for us to reverse this—and, I might point out, to reverse it against the wishes of the administration, the Justice Department, and the EEOC itself—and to say that we are going to put it in the hands of an agency which really does not want this type of power.

COURT ENFORCEMENT VERSUS CEASE AND DESIST POWERS

Mr. WILLIAMS of New Jersey. Mr. President, the issue that goes to the very heart of this bill is whether unfair employment practices should be dealt with by way of administrative cease and desist proceedings, subject to appellate court review, or, whether the Commission must resolve questions of discrimination through court litigation, as proposed in this pending amendment by the Senator from Colorado.

Since the inception of title VII, there has been an almost universal recognition of the need to provide some public mechanism for adjudication of charges relating to unfair employment practices. All of the Government witnesses testified at our hearings on the need for enforcement power for the Commission. The only disagreement has been whether this enforcement power should be through administrative proceedings or litigation in the courts.

The Committee on Labor and Public Welfare was unanimous in its view that some method of enforcement was required for title VII. An amendment to provide court enforcement for title VII, instead of administrative cease-and-desist proceedings, was given full and careful consideration throughout the hearings and in discussions in the full committee. The amendment was rejected, however, and the bill with administrative cease-and-desist enforcement powers was unanimously reported.

I should stress at the outset, that the type of enforcement favored by the committee is the very same type of authority which has been given to virtually all other Federal regulatory agencies such as the Federal Trade Commission, the Interstate Commerce Commission, the Securities Exchange Commission, the National Labor Relations Board, and others; all of these administrative agencies are empowered to issue cease-and-desist orders after holding administrative hearings.

In addition, the type of enforcement authority provided for in S. 2453 is the same as that adopted by 34 of the 38 States which have equal employment opportunity laws. Thus, we are in harmony with the States and we are in harmony with the other administrative agencies.

The committee found sound reason to follow the same approach in this bill. The same considerations which have led to the adoption of administrative enforcement in other areas were found to be fully applicable here.

One of these considerations is the need for the development and application of expertise in the recognition and solution of employment discrimination problems—particularly as these problems are presented in their more complex, institutional forms.

In the past several years, the development of the law of employment discrimination has made it increasingly clear that the most significant subject of dispute is often not whether there has been discrimination but what the appropriate remedy is to correct discrimination. Further, the question of remedy is often not posed as to just one person or small group or persons who have been discriminated against, but involves discriminatory practices inherent in the employer's basic methods of recruitment, hiring, placement or promotion.

Accordingly, the district courts have increasingly found themselves grappling with complex questions of remedy involving, for example, the plantwide restructuring of pay scales, progression lines, and seniority structures.

Thus, the nature of the issues arising under title VII indicates that reliance upon the expertise developed by trial examiners and commissioners in the course of their ongoing administrative experience with such issues, is just as important for this subject matter as is true of the equally complex subjects handled by the Federal Trade Commission, the Securities Exchange Commission, and others I have mentioned.

Another consideration of utmost importance is that exclusive reliance on court litigation means throwing a new, additional burden on our already overworked Federal district courts.

The complexity of the issues in employment discrimination cases can give rise to enormous expenditures of judicial resources. For example, Judge Allgood of the Federal District Court for the Northern District of Alabama, wrote an opinion 157 pages in length in United States against H. K. Porter, a title VII suit alleging employment discrimination in a single steel plant. Judge Allgood noted in his opinion that enough use was made of pretrial discovery in that case to "fill several court files."

The concern I express here is a crucial one. In his remarks to the American Bar Association on the State of the Federal Judiciary, given on August 10, 1970, Chief Justice Burger described at length the problem of overcrowding in our courts. Such overcrowding, he warned, threatens "a grave deterioration in the work of the Federal courts." The Chief Justice attributed the situation, in large part, to the tendency of Congress to meet the problems of our society by enacting new programs requiring court enforcement, and the simultaneous failure of Congress to give adequate consideration to the impact of such programs upon the caseloads of our courts.

In this bill we have given consideration to the problems encountered by our courts and have not imposed upon them this additional burden.

I should also point out that the enforcement mechanism contained in S. 2453 will insure more quickly a unified approach to the problems of discrimination, since decisions would be rendered by one agency rather than several hundred district court judges. In this way, I believe, a greater degree of predictability regarding legal interpretations and remedial approaches will be available to those who are covered by the law.

The argument has been made that court enforcement would be faster and more efficient than administrative enforcement, and the experience of the National Labor Relations Board was cited during our hearings as proof of this argument. The committee examined this contention and concluded that it was not borne out by available figures. The statistics in our record showed that the median time for resolution of a complaint by the National Labor Relations Board, from filing to decision, is a little less than 1 year, whereas the median time for resolution of contested cases in U.S. district courts, from filing to decision, is 19 months—a considerable difference.

Another argument that has been made in favor of court enforcement is the need to have an immediately available mechanism to handle the large backlog of charges now pending before the Commission. The committee felt that a serious question of due process could be raised if the new administrative enforcement procedures were applied to this backlog, inasmuch as the Commissioners themselves to some extent have an advocate's role under existing law. Therefore, an interim method for processing pending cases was devised in order to avoid even the appearance of a lack of due process for the respondent, until such time as the Commission, through the rulemaking authority provided in this bill, has created the necessary internal separation of functions contemplated by the administrative cease-and-desist enforcement scheme. Accordingly, the bill makes provision for the Commission to seek direct court relief with respect to pending cases in which the Commission is unable to obtain voluntary compliance after finding reasonable cause. All future cases would be determined by the Commission itself under their cease-and-desist power.

In closing, I would emphasize that our committee concluded that the cease-and-desist mechanism is the best possible method for securing the equal employment opportunities provided in this bill. Court enforcement is not without its merits, nor would it be unworkable if it became the device in the bill—but cease-and-desist is the better way, and our millions of disadvantaged citizens deserve no less than the best we can provide.

Mr. JAVITS. Mr. President, it is my intention to suggest the absence of a quorum so that Members may be advised that this is the most important, in my judgment, of all the amendments that we will debate promptly and vote on promptly.

I ask unanimous consent that I may regain the floor, and I shall not be long at all.

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

Mr. JAVITS. 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. JAVITS. Mr. President, I ask

unanimous consent that the order for the quorum call be rescinded.

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

Mr. JAVITS. Mr. President, we come now to the very heart of this bill. One might almost say, in the absence of a decision which would sustain the committee and reject the amendment, that as far as the world is concerned—and the world is deeply interested, especially the world of the minorities, I think it is fair to say, because one cannot use delicate parliamentary language—nothing will be accomplished. I think that something will have been accomplished anyhow by the provisions of the bill in many respects tightening up the procedures and so forth. But in the eyes of the great world of the minorities if we do not give the Commission cease-and-desist power, then the flag has been struck down and that is it.

This Commission has been weak, innocuous, and behind in its work. Its work has been very challengeable because it did not have cease and desist power. The whole point of seeking to buttress this power is to give cease and desist power.

This is the key amendment. It is true that the Commission itself does not have the power to sue now and that this would give it the power to sue.

The amendment of the Senator from Colorado thereby makes a little step forward in the situation of a weakly positioned plaintiff who might have trouble suing for himself. But the fact is that with the network of civil rights agencies which are around today, a determined plaintiff can find someone to sue for him—the legal aid society, the legal services of the OEO, or some such local connection—if he is really interested in bringing suit.

I do not think the fact the Commission will be able to litigate represents a very big step forward, although it is a power which it does not have today.

This has been especially true with respect to the pattern and practice suits in the case of the Attorney General. He has filed less than 100 such suits.

Considering the state of our Nation today, it seems to me that this should be a critically important consideration with every Senator. The demand has been so great in terms of equal employment opportunity and the hopes have been so pinned directly upon this way of resolving the difficulty that I do not think, unless we have very good reason—and I will deal with that in a moment—we should refuse to have a meaningful provision in this law insofar as the minorities are concerned.

I was very interested in listening to the Senator from Colorado. He is away from the Chamber, but will be back in a moment. I will repeat it and he can reply to it if he cares to do so. It was very interesting to me to hear the Senator from Colorado say, "We, of course, know that discrimination in employment is still going on." Of course, we all know that. We all know it is going on.

It is very interesting that he emphasized the argument that employers would be impressed with the fact that they could be brought into court.

I can assure the Senator of one thing. Employees will not be impressed. They are the ones we are seeking to impress. In the state of tension in which this country exists today, employees will be totally unimpressed, because the employees know that the high-priced lawyers for the corporations with the most money can string a case out for 10 years. There are antitrust cases in the Federal district court today which have been there for 10 years or more.

In addition, Mr. President, the Senator from New Jersey spoke very properly about Chief Justice Burger's concern with the crowded court dockets. What compounds that objection to this amendment is that the very dockets which are the most crowded are in the very districts in which this type litigation will take place: New York, Chicago, Philadelphia, Boston, San Francisco, and Los Angeles. Those are the areas where a trial cannot be had for 4 or 5 years.

It astounds me to hear a Senator rise and say that faster action can be had in Federal district courts when the whole country has been concerned for some time about overcrowding.

So I believe we have here the very heart of the controversy. What is there to be afraid of in a cease and desist order? The Senator said that in courts speedy redress can be had with due process.

Is the EEOC going to be without due process? If it is, it is going to be thrown out of court very quickly. With about 50 hearing examiners specializing in these matters, does it not lend itself to reason that the trial will come sooner and that the trier of the facts will have a far more specialized view and be able to hold much shorter hearings than U.S. District Court with the many other cases they have to deal with in the various parts of the country?

This kind of case, which depends so heavily on intent and purpose can be strung out in a very lengthy way by anyone with a real desire to do so; and it is logical to expect employers will do their utmost to run the thing in the best way to suit them.

The argument was made also that it will take 18 months to 2 years to set up a hearing examiners' panel. In the meantime, the law is as it is and the procedure goes on just the same, so the position of the employer and the employee is not worsened by the length of time it takes to set it up. But when it is set up there is redeemed the promise of the law in a far more promising way, to end discrimination on the grounds of religion, race, or sex, as far as employees seeking employment are concerned.

I hope Members will give this matter the degree of serious consideration it deserves because it has a very profound sociological impact, bearing very directly upon the condition of the country and one of the major causes for unrest and tension. To dash the hopes of the millions of the minorities by denying this kind of remedy we give in many other cases, through many other commissions, would not only be cruel but extremely unwise in a governmental sense, and it would have a cumulative and a very deleterious effect in heightening rather than lessening the tension within the country, so far as race is concerned. Everyone recognizes this is one of the most critical aspects of our situation.

We have always heard about cease and desist orders. We heard about them in 1964 and in New York we heard about them in 1945 when we first passed the Ives-Quinn law, which was the first of all the State laws against discrimination in employment. We always heard fears the law would be used as a weapon to harass business; that business would be put to an enormous expense in keeping records and answering cases; that harassment would be especially bad because it is so difficult to refute such a charge, and the most considered judgments were made by high-class lawyers, top businessmen, and academicians, to that effect.

Not dismayed, the New York State Legislature 25 years ago passed the Ives-Quinn law. I had the honor as Attorney General of New York during the period 1954 to 1957 to enforce that law. All of those fears were absolutely baseless. It was demonstrated that business was not harassed, that complaints were not all that numerous, that hearings were fair, and if not, they were turned over by the courts speedily and the situation worked out. A quarter of a century has passed and New York, up until a short time ago largest in population, is still a key State in terms of industry, finance, and power. Now, we have that experience proliferated throughout the country. Over 30 States out of the 50 States have provision for cease and desist orders to redress discrimination in employment.

It seems to me, in the face of that experience, there is every reason to honor the promise of the Civil Rights Act of 1964, and title VII of it, which for so long remained a weak and emasculated instrument and resulted in making very little use of this Commission. If we want to give it backbone and vertebrate, and moral and responsibility in doing the job, you have to give it this cease and desist power.

Mr. President, I would like to close as I began. I am glad the Senator from Colorado (Mr. DOMINICK) has returned. This is the key amendment. Without this provision in the bill we do not redeem any part of the promise for millions of minorities who are employed or seeking employment in this country, and the bill, as far as they are concerned, will be written off completely. There is no reason why in practice we should deny this opportunity to all these millions of workers, especially as this is sealed and certified by the fact that among the blacks there is double the average unemployment that there is among whites, and when you get to black teenagers, it is four and five times greater.

I hope the Senate in an act of statesmanship will recognize the key point about this bill as far as the people most affected are concerned, and reject the amendment.

Mr. DOMINICK. Mr. President, I understand the Senator's deep commitment to the bill as written and I certainly fully share with him the desire to be able to eliminate discrimination as rapidly as we can. That is not the subject before us today. The question is the methodology

involved, a word the Senator from New York uses quite regularly himself.

Because I think it is extremely pertinent to this discussion we are having, I wish to read into the RECORD the testimony of Mr. Brown who is the Chairman of the Equal Opportunity Commission. On page 41, in the middle of the page, Mr. Brown points out that although he supports the cease and desist principle as one method of enforcement procedure before the commission, he preferred the Federal court approach. This is what he said:

An alternative has been proposed by the President, however, which I now regard as preferable since it embodies a mechanism more conducive to enforcing the law rather than merely administering it. The cease-and-desist approach would inhibit such an attitude, for it carries with it a presumption of quasi-judicial neutrality toward the problem title VII seeks to correct. An active enforcement stance, which I think absolutely necessary, would thus be at odds with the Commission's own machinery.

The administration proposal, if enacted into law—

And that is what I am proposing—

would allow the Commission to go into court should conciliation fail, and seek redress of unlawful employment practices through the familiar process of litigation. The conceptual problems that I have indicated would result from the cease-and-desist approach would be avoided, while the best features of the independent agency concept would be saved.

In addition—and I think this is determinative—the administration's proposed enforcement system could be easily accommodated within the Commission's existing structure, while cease-and-desist machinery would require at least 2 years of tooling up before the first administrative hearings could be held. We would be able to enforce title VII in the courts with the comparatively less difficult adjustment of adding 50 lawyers to our General Counsel's staff during the first year, with an additional 25 during the second year.

Then, over on page 45, he had a colloquy with the Senator from New Jersey which I think is of particularly great significance. First of all, the Senator from Vermont (Mr. PROUTY) asked him what time would be involved in putting together a cease-and-desist procedure:

Mr. BROWN. I would estimate the time to put cease and desist in full order and get the first court-enforced order would be 5 or 6 years—

Not months; years—

Senator PROUTY. And under the administration's proposals?

Mr. BROWN. It would be a matter of a week. We have some lawyers on hand and we have the mechanism in the agency all ready for handling this type of proposal.

Senator PROUTY. Thank you.

Senator WILLIAMS. As I received your projection of the time it would take with cease and desist, which is the legal enforcement provision, did you say it would take 6 years to get a case—

Mr. BROWN. From the time it was originally started until the time the first order was enforced by the court, it would take between 5 and 6 years. That is my first estimate.

Senator WILLIAMS. Would you run through that again and how it would work? Why would it take that long? We are going now from the date of enactment.

Mr. BROWN. That is correct.

Senator WILLIAMS. Why would it take 5 or 6 years?

Mr. BROWN. The first step would be the actual tooling up of the agency to handle cease and desist authority. We are not presently geared for that kind of authority.

Senator WILLIAMS. You are not starting with the filing of a charge?

Mr. BROWN. No, we are not.

Senator WILLIAMS. You are starting with the period of tooling up.

Mr. BROWN. That is correct.

Senator WILLIAMS. What goes into the tooling?

Mr. BROWN. Under the National Labor Relations Board, they have about 130 hearing examiners, so it would mean we would have to get on board probably 50, 60, or 70 of these persons anyhow in order to cover the entire country.

And, incidentally, that has been raised to 100 now.

These people are hard to come by. We would have to go out and actually recruit them very actively.

Senator WILLIAMS. That would be harder than getting the lawyers that the President has promised you?

Mr. BROWN. I think it would be infinitely harder than just getting the lawyers we would need.

Second, of course, is the obtaining of physical facilities, because you would have to have hearing rooms available to you and these would be needed throughout the country.

In addition to that, the necessity of restructuring our own organization; namely, to pass new regulations which would be able to handle the cease and desist regulations which we presently do not have, of course. That is the initial period of time.

Senator WILLIAMS. That is the initial period for tooling up.

What does the Commission have now in terms of professional personnel to deal with complaints?

Mr. BROWN. Basically, our conciliators and investigators as well as our general counsel staff. Then, of course, the Commissioners themselves make the determination of reasonable cause.

I might also point out to the chairman that, under the present setup as it exists under the National Labor Relations Board, there are 23 lawyers on each Commissioner's staff. We have presently under our setup only one administrative assistant for each Commissioner.

So, of course, in addition to the hearing officers, even under the cease-and-desist proposal, we would find it necessary to obtain probably some 100 additional lawyers as well.

Senator WILLIAMS. That is the first stage, phase 1 of tooling up if it were to be cease and desist. What would be the first phase of tooling up in the event that the alternate approach were used?

Mr. BROWN. As a practical matter, there would be no first phase because we presently have within the Commission attorneys in the General Counsel's staff which could start filing suits immediately. We, of course, would be recruiting lawyers in addition to those lawyers we have.

We would be selective in the cases we would file suit on but, if the proper case came about, this could be done within a matter of weeks.

Senator WILLIAMS. This would be the instant-action approach?

Mr. BROWN. It would just about amount to that.

Senator WILLIAMS. How long will it take you to accomplish your suggestion and the present objective? How many new lawyers?

Mr. BROWN. Approximately 50 in the first year.

The point I am making in reading this testimony is that the Senator from New York, the Senator from New Jersey, and I are interested in being able to take whatever steps are reasonable and practical in order to be able to do something in connection with discrimination which still prevails in our country. As we all know, the discrimination cases that are being filed because of discrimination on account of sex have been vastly increasing over the last 2 years, and will undoubtedly increase even more if the constitutional amendment being proposed is adopted. For the life of me, I do not see how we are improving our ability to alleviate discrimination in this country by establishing a system which will take, in the words of the Commission Chairman who will be given this power, 5 or 6 years to set it up. Why not proceed with the same system that is already established, that is already staffed, and that is ready to proceed immediately, so the Commission can take these cases into court, where the procedures are known to everybody throughout this country, and where we will have the ability, by so doing, to get almost instantaneously a procedure through the established processes, if it seems to be that kind of case? For the life of me, I cannot understand why we should go the other way.

I point out that the Commission has said—and I do not think it has been refuted by anyone—that it is 18 to 24 months behind now, simply in the investigative process, and it is going to take 5 or 6 years before the first court-enforced order of the Commission can be put into effect, in the event the cease and desist provisions remain in the bill. We will eliminate the latter gap even though we are adding 16½ million, as the bill is now written, to the jurisdiction of the Equal Employment Opportunity Commission.

It just makes commonsense to me to say that we should go by the court approval route so we will be able not only to avoid the delay, but avoid the approach of the so-called star chamber. This Commission would have many of those aspects, inasmuch as it would be the investigator, the prosecutor, the trial examiner, and the judicial reviewer, all before one ever got before a court. It is extremely difficult for any executive agency to handle all these separate functions and still be fair and impartial to all the people concerned.

Mr. JAVITS. Mr. President, just to complete this discussion, I have no challenge to the Senator's personal dispositions in civil rights matters, but I think quite unwittingly he is completely overlooking the fact that the real significance of this bill, to millions of minorities, is this very cease and desist power. And I must say that, speaking of Americans of ordinary commonsense, it certainly stretches my imagination, and I think it will stretch the imaginations of the majority of Americans, that it is claimed that a court trial, and all the appeals, with what each and every American knows about that today, is going to be faster than a specialized proceeding before an agency.

Furthermore, Mr. President, everything that is said about the recourse to the courts is going to go on until the

agency is set up for the purpose of issuing cease and desist orders.

The Senator referred to the testimony. I should like to refer to the testimony of Clifford Alexander, who is a member of the Commission and was its Chairman. His view is exactly contrary to that of Chairman Brown. I had the feeling that Chairman Brown was rather overimpressed by the fact that he had to sustain the administration's position. I think he stretched things very considerably in seeking to sustain that position.

Here is what Alexander said, beginning on page 63, at the bottom of the page:

> By Chairman Brown's own testimony, only selected cases could be taken under Senator Prouty's bill which is readily apparent. If we did what the Justice Department now does perhaps one in 10,000 would have the support of the Equal Employment Opportunity Commission.
>
> If with 50 lawyers they brought cases on a selective basis at best only one in 100 could receive help. Under cease and desist individual cases will proceed far more rapidly than through the courts.
>
> I would like to disagree vehemently with the idea that tooling would take 2 years. I think it would take just 2 or 3 months to get started. Hiring some of the proper staff should take no longer than a few months. Also you don't have to wait for an employment discrimination to go through the entire pipeline before starting a hearing.

So his estimate is months, and Chairman Brown's estimate is years. And I would like to point out that even Chairman Brown admitted they would have to take selected cases, if they take them into court. He conceded that in his own testimony.

So, Mr. President, I conclude as follows: Because of the meaningfulness of this legislation, because of the fact that it strains credulity at this time to contend that you are going to get action through court litigation faster than you will through agency procedures, and because of the contradictory testimony of the former Chairman as compared with the present Chairman of the EEOC, I hope that the Senate will reject the amendment.

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

Mr. JAVITS. I yield.

Mr. COOPER. I have heard the exchange between the Senator from New York (Mr. JAVITS) and the Senator from Colorado (Mr. DOMINICK), and I would like to ask a few questions, if I may.

Is it correct to say, that under present law, section 706, only the aggrieved may enter a court, or the Attorney General, when there is a pattern or practice of discrimination?

Mr. JAVITS. A pattern or practice action, that is exactly correct.

Mr. COOPER. Under the bill as reported by the committee, the aggrieved can go into court. Is that right separate from his right to appeal from the Commission's findings, or is it only a right of appeal upon the Commission's findings?

Mr. JAVITS. It is separate if the Commission does not actually institute a proceeding, but if the Commission does institute a proceeding, then he has to proceed by the Commission route. That would be the same with Senator DOMINICK's amendment, because once they sue, they preempt his right to sue.

Mr. COOPER. Under the existing law, the Commission is required to attempt to settle issues by conference, conciliation, and persuasion. Is that duty still incumbent upon the Commission under this measure?

Mr. JAVITS. Yes; it continues exactly as before, except that it has the added powers.

Mr. COOPER. Before a proceeding is commenced, which might result in a cease and desist order, would the Commission be required manditorily to undertake means of conciliation and persuasion?

Mr. JAVITS. As I read the bill, it is mandated to do so.

Mr. COOPER. I think my question is important, because I think it would be fair to the parties and the best policy of our Government that an effort be made to settle the issues by conciliation and agreement, rather than undertake immediately the cease and desist procedure.

Mr. JAVITS. I thoroughly agree with the Senator from Kentucky; and that is the uniform practice of all the State agencies with power to issue cease and desist orders.

Mr. COOPER. But does the language of the committee bill merely permit the practice, or is there language which states that the Commission shall undertake conciliation prior to using the procedure, which may result in cease and desist orders?

Mr. JAVITS. It is absolutely mandated. I refer the Senator to section 706 (f) as the law will be if the bill is passed, which is found at page 43 of the committee report. It says:

> If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission—

And so on. So it is mandated.

Mr. COOPER. In the case of a violation, am I correct that the remedy is civil only with the possible recovery of wages, or is a criminal proceeding provided as well as civil?

Mr. JAVITS. No, no. It is a cease-and-desist order, to refrain from the discriminatory practice, and the only thing it can order is affirmative action to remedy the violation. That would include, where appropriate, payment of back wages like the minimum wage law and the NLRB.

Mr. COOPER. Can the Senator provide me some examples of precedents of cease-and-desist proceeding, now embodied in the law?

Mr. JAVITS. Well, the National Labor Relations Board, the Federal Trade Commission, the SEC, are examples of agencies which may issue such orders. This is pretty general practice, and, as I say, more than 30 of the States have cease-and-desist machinery provided for commissions or boards, or individual attorneys general in similar circumstances.

Mr. COOPER. I thank the Senator.

Mr. JAVITS. I thank my colleague.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado. On this question, the yeas and nays have been ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislation clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I know that arguments have been made in response to the amendment of the distinguished Senator from Colorado. I rise also to oppose the amendment.

I recall that in 1964, when the Civil Rights Act of 1964 first incorporated this legislation to provide for the EEOC, I spoke on the floor of the Senate about my very firm belief in and support of this program. Unfortunately, the great hope and expectations we felt then have not been realized.

Time and time again many people around this country comment that if only the minorities in this country had initiative, if only they had energy, all they have to do is go out and get a job and work their way up and make something of themselves.

But the sad fact is that it is much more difficult for a black person, or a Mexican American, or an American Indian, or a woman or others in the minority to do that. The case is extremely convincing and compelling that racial discrimination does exist in this country to an extraordinary degree, and racial discrimination exists in the area of employment to a very heavy degree. I think the steps and procedures which have been incorporated into this legislation are the most effective remedy in trying to really meet the brunt of the burden of discrimination which exists within our country. Virtually all major civil rights organizations feel that the power to issue cease-and-desist orders will be more effective than the court enforcement mechanisms. I agree.

So I feel that it is extremely important that the amendment of the distinguished Senator from Colorado is rejected.

Also, Mr. President, I think that if we are really serious about combatting discrimination against women in private employment, the cease-and-desist power provides a stronger tool to meet that problem. As one who has very serious reservations about the constitutional amendment for equal rights for women, I have stated time and time again in my own State of Massachusetts, when asked about this question, that I believe that by providing the cease-and-desist power we can assure much fairer and more equitable treatment for women's rights in private employment, rather than going through the very lengthy procedure in the courts.

So I think there is an additional reason, other than protection for the various minorities in this country. And that is to provide protection for the women in our society who are being dis-

criminated against, solely on the basis of sex, with respect to equality in job opportunity.

I know that my distinguished colleague has reviewed in some detail the handicap that would result in terms of time and delay if we were to go by the route of the courts, that we would have different kinds of decisions, perhaps, in different parts of our country. I know that during the course of the argument the point has been made that some 34 of 38 States with equal opportunity laws presently provide the cease-and-desist power. I know that the point has been made, which I believe in strongly, that what we really need is a unified approach to cases involving individual employees.

I feel that cease-and-desist power is the best way. The bill as it stands at present is a significant step forward. I would certainly hope that the amendment of the distinguished Senator from Colorado would be rejected.

Mr. COOPER. Mr. President, I have listened to the debate, and my mind has changed because of the debate.

I recall in past years, in connection with the Civil Rights Act and other acts, but particularly the Civil Rights Act, an evolving process in the Congress regarding the procedures by which an aggrieved person could secure relief. I recall that the first Civil Rights Act provided that only the aggrieved person could seek relief in the courts. Later Civil Rights Acts provided the Attorney General with authority to intervene on behalf of an individual. Authority was also provided to the Attorney General to sue in cases involving a pattern of discrimination.

I must say that I believe the cease-and-desist procedure provides a fair and speedier means of reaching a decision than the single court procedure.

I note that the bill provides for review of Commission findings by the circuit court of appeals and the Supreme Court. This due process provision is essential, and makes the bill appeal more strongly to me.

Just recently, concerning the Air Pollution Act, one of the serious issues in the debate, both in the committee and on the floor, was whether the bill should provide review by the circuit courts and the Supreme Court. The Senate decided for such review.

I am glad that appeal to the courts is provided in the pending bill.

I should like to speak briefly at this time with respect to a point that I have addressed to the Senator from New York (Mr. JAVITS).

I was a Member of the Senate for 2 years, in 1947 and 1948, when the Taft-Hartley Act was passed, and it was as fiercely battled and debated as any measure I can recall during my service in the Senate. I recall that Senator Taft insisted that the counsel of the National Labor Relations Board should be separate and independent of the board. He made a strong case that the accuser should not be one who would sit upon the case.

I would assume that in many decisions that will be made by this Commission, its counsel would advise the Commission as to whether or not an order should be issued. I ask the sponsors of the bill whether they have considered writing into the bill a provision that counsel for the Commission shall be independent of the Commission itself.

Mr. JAVITS. Let me say to the Senator from Kentucky that I am rather hopeful the Senate may reject this amendment, and if it does, and the commission has the powers which I feel it needs to have, I understand that an amendment will be offered with respect to the independent counsel and I would be favorable to it. I wish to give the Senator that assurance because I think, then, the case for it becomes an active one. As we stand now, we do not know yet what the Senate will decide with respect to the cease and desist powers.

Mr. COOPER. Can the Senator give me assurance, that if the pending amendment should be agreed to, that such an amendment will be offered—of course the sponsors of the bill can do so—to provide for independent counsel?

Mr. JAVITS. I can give the Senator that assurance, speaking for myself.

Mr. WILLIAMS of New Jersey. Let me say to the Senator I am sure it will be offered and it will be acceptable to us.

Mr. ERVIN. Mr. President, if I may be recognized for 1 minute on the point the Senator from Kentucky was making: the bill in its present form would permit the rankest kind of prostitution of the judicial process. Under the provisions of the bill, the Commission even has the power to file complaints in the first instance but, in any event, it says it shall investigate complaints so that it is an investigator, a prosecutor, a jury, and a judge. Mr. President, no bill should permit the uniting of these functions in one body. Under the decision in re *Murchison*, 349 U.S. 133, it is a clear violation of the due process clause of the Constitution of the United States to do so.

I just wanted to make that statement for the benefit of the distinguished Senator from Kentucky, that here is a bill which authorizes, as I say, the rankest prostitution of the judicial process of any piece of proposed legislation that has come within my view.

Mr. DOMINICK. Mr. President, let me reply briefly to some of the discussion I heard by the Senator from Massachusetts (Mr. KENNEDY). He apparently is under the impression that if my amendment is agreed to, there would be a downgrading of the Commission or of equal rights.

Nothing could be further from the truth. If he read the amendment—I am not even sure that he has—he would see that what I am providing for is the ability of the Commission to go directly into court, that it does not have to go through the trial examiner process or review by the Commission. It can decide whether reasonable cause exists in a case and take it directly to court if reasonable cause is present. This will be quicker, more effective, and cheaper. Certainly this has the wholehearted support of the Chairman of the Equal Employment Opportunity Commission himself and the administration as a whole.

Mr. President, I am ready to vote.

Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The question is on agreeing en bloc to the amendments of the Senator from Colorado.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GURNEY (when his name was called). On this vote I have a pair with the Senator from Connecticut (Mr. RIBICOFF). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

Mr. BIBLE (when his name was called). On this vote I have a pair with the Senator from Utah (Mr. Moss). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. Moss), the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Georgia (Mr. RUSSELL), the Senator from Mississippi (Mr. STENNIS), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Alabama (Mr. SPARKMAN), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are absent on official business.

On this vote, the Senator from Georgia (Mr. RUSSELL) is paired with the Senator from Washington (Mr. MAGNUSON). If present and voting, the Senator from Georgia would vote "yea" and the Senator from Washington would vote "nay."

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS) and the Senator from Maine (Mr. MUSKIE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Utah (Mr. BENNETT), the Senator from Arizona (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), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from South Dakota (Mr. MUNDT), is absent because of illness.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from South Dakota (Mr. MUNDT), the

Senator from Illinois (Mr. SMITH), 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 27, nays 41, as follows:

[No. 341 Leg.]

YEAS—27

Allen	Eastland	Long
Allott	Ellender	McClellan
Baker	Ervin	Miller
Byrd, W. Va.	Fannin	Saxbe
Cook	Griffin	Spong
Cotton	Hansen	Talmadge
Curtis	Holland	Thurmond
Dole	Hollings	Williams, Del.
Dominick	Jordan, Idaho	Young, N. Dak.

NAYS—41

Anderson	Hatfield	Pastore
Bayh	Hughes	Pearson
Boggs	Jackson	Pell
Brooke	Javits	Percy
Burdick	Kennedy	Prouty
Case	Mansfield	Proxmire
Church	Mathias	Randolph
Cooper	McCarthy	Schweiker
Cranston	McGovern	Scott
Eagleton	McIntyre	Smith, Maine
Fong	Metcalf	Stevens
Fulbright	Mondale	Symington
Gore	Nelson	Williams, N.J.
Hart	Packwood	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Bible, for.
Gurney, for.

NOT VOTING—30

Aiken	Hartke	Muskie
Bellmon	Hruska	Ribicoff
Bennett	Inouye	Russell
Byrd, Va.	Jordan, N.C.	Smith, Ill.
Cannon	Magnuson	Sparkman
Dodd	McGee	Stennis
Goldwater	Montoya	Tower
Goodell	Moss	Tydings
Gravel	Mundt	Yarborough
Harris	Murphy	Young, Ohio

So Mr. DOMINICK's amendments (No. 978) were rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendments were rejected.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE PROGRAM

Mr. SCOTT. Mr. President, I rise to ask the distinguished majority leader to advise us of the schedule for the rest of the year, or at least as much of it as he can tell us.

Mr. MANSFIELD. Up to and including October 16, the schedule is as follows—and a certain degree of flexibility must be allowed.

Although the pending business in the Senate is still Senate Joint Resolution 1, the leadership hopes that negotiations will proceed on the merits of this proposal—that is, Senate Joint Resolution 1—and while these matters are being worked out, we hope to proceed with the following measures on the days indicated.

Again, the joint leadership must ask for flexibility.

Mr. SCOTT. And durability.

Mr. MANSFIELD. We have that already.

It is hoped that appropriation bills can be expedited, those in our Senate committee, as well as those yet to be received from the House. These bills will be given expedited action on the floor.

Today, EEOC amendments, hopefully we might arrive at some consent agreement with respect to debate later today. Tomorrow, the reorganization plan disapproval resolution, Senate Resolution 433; and the military procurement authorization conference report. That is the big military bill.

Friday, hopefully, military construction appropriations, H.R. 17970 if the conference can be concluded at that time, it is my intention, as chairman of the Subcommittee on Military Construction to call a meeting of the subcommittee and report out that appropriation bill, but that depends upon the two Houses getting together and agreeing to a conference report. In any case on Friday we will consider the Federal Highway Extension Act that was reported to the Senate today.

Monday, October 5, legislative reorganization, H.R. 17654. Tuesday, October 6, equal rights for women, which the joint leadership and I have discussed in detail, and which we hope to offer without change and to have the vote on the basis of its own merits.

Mr. SCOTT. Which we have faithfully promised to do for the ladies.

Mr. PASTORE. Is there any possibility of taking up that matter Wednesday rather than Tuesday?

Mr. MANSFIELD. Yes; this is all flexible. We will be on the equal rights most of next week during the first shift of the Senate.

Mr. PASTORE. We want to be here for the ladies.

Mr. MANSFIELD. We have several days set aside, including Thursday.

Then on Tuesday we hope also to do the drug bill and on Wednesday the class action bill as well. On Thursday we come to four crime bills which we hope to consider: H.R. 17825, S. 2896, S. 642, and S. 3650; all on the calendar. We have the Transportation appropriation bill in there

Also, on Friday there is equal rights for women, the Labor-HEW appropriation, which I understand, like the Transportation appropriation bill, is ready for action, or will be soon.

Around Monday, October 12, there is the foreign aid appropriation bill and the occupational safety bill.

Around Tuesday, October 13, the Consumer Protection Agency and social security and welfare reform, and, if possible we will complete the above and the remaining appropriation bills, including Defense, independent offices, and the supplemental for Wednesday, Thursday, and Friday of that week. This schedule is flexible and shifts in the days may be necessary.

So we have our work cut out if we are going to adjourn by October 16, or if we have to recess at that time and come back after the election, which I think would be a disaster.

Mr. SCOTT. Mr. President, if the Senator will yield, I wish to second the remark about a "disaster" and add the word "unmitigated." I cannot conceive of anything worse than a special session. I lived through the special session of 1948 in which 2 weeks were spent doing nothing except indulging in recrimination; and I remember also the postconvention session of 1960, marred by politics of the most undesirable kind, in which I took a full and most gleeful part, to my regret. [Laughter.]

I can be reasonably sure, having set such a bad example, there are numerous others ready to follow it, although I am ready to abstain.

I think it would be a horrible thing to do and an offense against peace and good order, a sham for the Congress, and a spectacle. I hope we adjourn sine die.

Mr. MANSFIELD. I could not agree more than I do with what the distinguished minority leader said. There is the schedule. It will take a lot of work, understanding, and cooperation; and it will take all of us together to do it. But we must complete our work before adjourning sine die.

EQUAL OPPORTUNITIES ENFORCEMENT ACT

The Senate continued with the consideration of the bill (S. 2453) to further promote equal employment opportunities for American workers.

Mr. PASTORE. In connection with the bill now pending, how many amendments do we have, and can we have an agreement on limitation of debate?

Mr. MANSFIELD. I will turn that question over to the manager of the bill, the Senator from New Jersey.

Mr. WILLIAMS of New Jersey. I know of two amendments that will be offered by the Senator from Colorado. There are other amendments at the desk by the Senator from North Carolina.

Mr. PASTORE. Can the Senator from North Carolina give us some idea with respect to his amendments?

Mr. ERVIN. No; I cannot tell how many will be called up.

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

Mr. WILLIAMS of New Jersey. I yield.

Mr. JAVITS. There will be one amendment by the Senator from Ohio.

Mr. WILLIAMS of New Jersey. That makes three amendments certain.

Mr. PASTORE. Can we have a limitation of debate on those three amendments?

Mr. MANSFIELD. Mr. President, I wish to ask the Senator from Colorado if he would be agreeable to a time limitation.

Mr. DOMINICK. I always do better without a time limitation than with one.

Mr. MANSFIELD. Would the Senator from North Carolina consider a time limitation?

Mr. ERVIN. I believe we can get along better without a time limitation.

Mr. MANSFIELD. Would the Senator from Ohio consider a time limitation?

Mr. SAXBE. Yes.

Mr. MANSFIELD. How long?

Mr. SAXBE. The minimum.

Mr. MANSFIELD. One-half hour?

Mr. SAXBE. Yes.

Mr. ERVIN. Mr. President, I would object to a 1-hour time limitation on my amendments.

Mr. MANSFIELD. We were discussing the amendment of the Senator from Ohio. Would the Senator from North Carolina consider a time limitation of 1 hour?

Mr. ERVIN. Yes; I have one amendment I will talk about.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the amendments to be offered by the Senator from Ohio (Mr. SAXBE), and the Senator from North Carolina (Mr. ERVIN), there be a time limitation of 1 hour.

Mr. ERVIN. That leaves one-half hour to a side. I would have to object to that.

Mr. MANSFIELD. How about an hour and a half, with 30 minutes to the manager of the bill and 1 hour to the Senator from North Carolina.

Mr. ERVIN. That is all right.

Mr. MANSFIELD. An hour and a half, with 30 minutes to the manager of the bill and 1 hour to the proponent, the Senator from North Carolina.

Mr. JAVITS. And a half hour on the Saxbe amendment?

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

The committee amendment is open to further amendment. What is the pleasure of the Senate?

AMENDMENTS NO. 977

Mr. DOMINICK. Mr. President, I call up my amendments No. 977 and ask that they be read.

The PRESIDING OFFICER. The amendments will be read.

The legislative clerk proceeded to read the amendments (No. 977).

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

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

The amendments (No. 977) are as follows:

AMENDMENTS No. 977

On page 28, lines 6 through 8, strike the following: "or by an officer or employee of the Commission upon the request of any person claiming to be aggrieved."

On page 29, line 16, strike out "or (d)".

On page 30, beginning with line 16, strike out all through page 31, line 5.

On page 31, line 6, strike out "(e)" insert in lieu thereof "(d)".

On page 31, line 23, strike out "(f)" and insert in lieu thereof "(e)".

On page 32, line 9, strike out "(g)(1)" and insert in lieu thereof "(f)(1)".

On page 33, line 13, strike out "(h)" and insert in lieu thereof "(g)".

On page 33, line 25, strike out "(x)" and insert in lieu thereof "(v)".

On page 34, line 13, strike out "(i)" and insert in lieu thereof "(h)"; beginning in line 21 strike out "(l)" through "(n)" and insert in lieu thereof "(k)" through "(m)"; line 25, strike out "(j)" and insert in lieu thereof "(i)".

On page 35, line 1, strike out "(h)" or "(i)" and insert in lieu thereof "(g)" or "(h)"; line 4, strike out "(k)" and insert in lieu thereof "(j)".

On page 37, line 9, strike out "(l)" and insert in lieu thereof "(k)".

On page 39, line 9, strike out "(m)" and insert in lieu thereof "(l)"; line 10, strike out "(k)" and insert in lieu thereof "(j)"; line 14, strike out "(l)" and insert in lieu thereof "(k)"; line 20, strike out "(n)" and insert in lieu thereof "(m)"; line 22, strike out "(k)" and insert in lieu thereof "(j)"; line 23, strike out "(l)" and insert in lieu thereof "(k)".

On page 40, line 4, strike out "(m)" and insert in lieu thereof "(l)"; line 6, strike out "(o)" and insert in lieu thereof "(n)"; line 11, strike out "(p)" and insert in lieu thereof "(o)"; line 19, strike out "(k), (l), (m), or (n)" and insert in lieu thereof "(j), (k), (l), or (m)".

On page 41, line 13, strike out "(q)(1)" and insert in lieu thereof "(p)(1)"; line 17, strike out "or (d)"; line 18, strike out "(f) or (i)" and insert in lieu thereof "(e) or (h)".

On page 42, beginning in line 12, strike the following: "(f), or has entered into an agreement under subsection (f) or (i)" and insert in lieu thereof "(e), or has entered into an agreement under subsection (e) or (h)"; line 16, strike out "(i)" and insert in lieu thereof "(h)"; line 17, strike out "(h)" and insert in lieu thereof "(g)"; line 22, strike out "(h)" and insert in lieu thereof "(g)"; line 23, strike out "(i)" and insert in lieu thereof "(h)".

On page 43, line 1, strike out "(i)" and insert in lieu thereof "(h)"; line 11, strike out "(h)" and insert in lieu thereof "(g)"; line 22, strike out "(r)" through "(w)" and insert in lieu thereof "(q)" through "(v)"; line 23, strike out "(u) and (v)" and insert in lieu thereof "(t) and (u)".

On page 44, line 1, strike out "(q)" and insert in lieu thereof "(p)"; line 2, strike out "(u)" and insert in lieu thereof "(t)"; line 3, strike out "(w)" and insert in lieu thereof "(v)".

Mr. DOMINICK. Mr. President, my amendment is a very simple one. It is my hope that the manager of the bill will accept it. I do not know whether I have his attention, or where he is.

Mr. JAVITS. The Senator has my attention.

Mr. DOMINICK. I have the attention of the Senator from New York.

The PRESIDING OFFICER. Is it the desire of the Senator from Colorado that his amendments be considered en bloc?

Mr. DOMINICK. Yes; there is only one portion of it that is an amendment; the rest are technical amendments.

The PRESIDING OFFICER. Is there objection to considering the amendments en bloc? Without objection, it is so ordered.

Mr. DOMINICK. Mr. President, I shall be very brief. The amendment is very simple. The bill as it is now written gives both charging, investigating, prosecuting, judging, and enforcement procedures to the Commission. When we were considering this matter in the committee, some of us felt that a member or an employee of the Commission should not be entitled to file charges, since, after all, he might later be called on to both investigate and prosecute the charge, and then to decide it.

The bill now reads that any officer or employee of the Commission can now file a charge upon the request of any person claiming to be aggrieved. I do not know how many employees are going to be in the Equal Employment Opportunity Commission when it is finally established, but it seems safe to say that there will be a considerable number. I do not know who they are going to be, nor does anybody else.

I do not, for the life of me, see the rationale in saying that one agency or any one staff person can be the filer of a charge and then the investigator and then the prosecutor of the charge and then the decider of the charge and then the reviewer of the charge and then the enforcer of the charge. That is what the bill does now. What I am providing by my amendment is that an officer or employee of the Commission shall not be one of those who shall file charges.

Mr. WILLIAMS of New Jersey. Mr. President, I oppose the amendment offered by the Senator from Colorado. We know that there can be a fear of reprisal that would prompt someone not to make a complaint that would lead to the filing of a charge. In those cases where someone did not have the bravery, or indeed other resources, to fight the establishment, it would seem the opportunity should be there within the Commission to file a charge in a situation where it is felt that a charge should be made notwithstanding the fact that the complaint is not coming from the aggrieved person.

Unlawful employment practices do not always take place in an atmosphere free of repressive influences. In many instances, job discrimination is but a symptom of a paternalistic attitude toward minorities and women that depends on a subtle climate of fear for its survival.

Under such circumstances persons who are victims of unlawful practices are generally very reluctant to make a complaint against those who are in immediate control of their lives, and it would be rather naive of us to expect them to do otherwise. The use of privately imposed sanctions against those who question the established order is far from unknown to this country, and the uncertainty and procedural delays that inevitably accompany any kind of formal legal relief are not an encouraging prospect for even the most intrepid individual.

Title VII relief should not be made to depend on either the financial resources or unusual bravery of any person denied its protection. The agency charge is addressed to the latter problem, and to suggest that it poses a threat to the rights of respondents is to conjure up nonexistent dangers.

First, an agency charge is merely a device for setting the Commission's investigations and conciliations machinery in motion, and does not carry with it any legal conclusions. It is only an indication that a violation may exist and ought to be looked into. It precedes any determination as to whether reasonable cause to believe that a violation has occurred, which is prerequisite to the triggering of any enforcement machinery.

Second, by placing the authority to file a charge in the hands of appropriate Commission staff rather than with the members themselves, even the most remote appearance of impropriety is totally avoided. The case would proceed in the same fashion as any other grievance, with the same protections afforded to respondents at each stage of the proceedings. If the case reached the stage where an order could be issued, the order would still have to be based on the record after

strict observance of all the procedural requirements, and then would still be subject to review of a court of appeals. In this light it is extremely difficult to see how the rights of any party could be compromised by the existence of agency authority to merely initiate its own processes; and indeed, to deny the agency such authority would, with the exception of the NLRB, make it a rather unusual administrative body.

Mr. DOMINICK. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. There is not a sufficient second.

The yeas and nays were not ordered.

Mr. MANSFIELD. Mr. President, I request the yeas and nays now.

The yeas and nays were ordered.

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

Mr. DOMINICK. I yield.

Mr. JAVITS. Mr. President, the matter now being dealt with by the Senator from Colorado represents a compromise which was worked out in the committee, and as I suggested the compromise, I think the Senate should understand that it was a compromise. The fact is that the law today, as it stands now, section 706 of the Civil Rights Act of 1964, permits a member of the Commission, when he himself, on his own recognizance, believes a charge should be filed, to file one.

This procedure was objected to in our committee in an amendment by one of our members. So, as we were faced with the argument which is made by the Senator from New Jersey (Mr. WILLIAMS), manager of the bill, that this is the kind of field where there could be intimidation, and where an aggrieved person might not wish to complain, himself, simply because of economic fear of losing his job, which could not be traced to anyone's fault by law, this way was arrived at in which the person aggrieved could make the request.

I think the matter should be made clear for the legislative history. I ask the attention of the Senator from New Jersey, to see if he agrees with me. I think this perhaps will go a considerable way toward meeting the view of the Senator from Colorado. The request of a person in whose behalf the complaint is going to be made is the one we are talking about. It is not just any person aggrieved who can ask the Commission to go ahead, but if the Commission is going to allege that the act has been violated as to John Doe, the person that has to ask the Commission or officer or employee should be John Doe himself. That is my understanding of my own compromise. I wanted to be positive the Senator had the same feeling.

The other point which I think again would go a long way toward meeting the point made by the Senator from Colorado is that the officer or employee of the Commission shall be either a member of the Commission or a person whom the Commission has designated for that purpose, so that we will not have any kind of happenstance in the making of the charge.

Again, this is my understanding of the responsibility which is inherent in this compromise. But I wonder whether the Senator would agree with me as to the meaning of the compromise in those two respects.

Mr. WILLIAMS of New Jersey. Referring to——

Mr. JAVITS. Referring first to the fact that the request should be of the person for whose benefit the charge will be made; that is, if it is a charge made because of the wrong done to John Doe, that the officer or employee of the Commission who makes the charge should have been requested to do so by John Doe.

Mr. WILLIAMS of New Jersey. That is my understanding, and I think it reads precisely that way.

Mr. JAVITS. Good. The other thing is our understanding—or at least I know we discussed it in the committee—that the officer or employee of the Commission who is entitled to make such a complaint should be a person designated by the Commission for that purpose, so that we do not have to deal with—as Senator DOMINICK, I think properly suggested—hundreds of employees, on a happenstance basis.

Whatever we do on the amendment, however the Senator may feel about it, I think he is entitled to have those assurances locked into the situation, so that it is not an irresponsible proceeding at all.

As to the principle involved, the Senator is entitled to his own view, but I think he is entitled to those two assurances with respect to the meaning of this clause.

Mr. DOMINICK. Mr. President, I thank the Senator from New York for trying to interpret a bill in a way which would be helpful, but which certainly does not read that way.

The bill, if Senators will read the language, says, and it is very clear:

> (b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by an officer or employee of the Commission upon the request of any person claiming to be aggrieved.

This could be a wife, a child, a cousin, a friend, a passing acquaintance, someone who did not like an employer—it could be absolutely anyone; and if they know of one of these officers or employees of the Commission, and make that claim, then an officer or employee could—he does not have to, but he could—file the charge.

The point I am making is that we are adding 16.5 million people to the jurisdiction of this Commission. When we say that any employee or officer can go ahead and file a charge upon the request of anyone else who feels aggrieved, I feel aggrieved over the action of the Senate a lot of times, but that does not mean I am going to bring charges against the Senate.

Mr. JAVITS. Why not?

Mr. DOMINICK. But what I am saying is that this language does not back up the interpretation that has been given to it by the distinguished Senator from New York, in my opinion.

So, in view of those facts, I think we are back to the position that I took. I am sure that no one is going to pay the slightest attention to it, but I am ready to vote.

The PRESIDING OFFICER (Mr. COOK). The question is on agreeing to the amendment (No. 977) of the Senator from Colorado (Mr. DOMINICK). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Georgia (Mr. RUSSELL), the Senator from Mississippi (Mr. STENNIS), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Alabama (Mr. SPARKMAN), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are absent on official business.

On this vote, the Senator from Georgia (Mr. RUSSELL) is paired with the Senator from Washington (Mr. MAGNUSON). If present and voting, the Senator from Georgia would vote "yea" and the Senator from Washington would vote "nay."

I further announce that, if present and voting, the Senator from Utah (Mr. MOSS), the Senator from Oklahoma (Mr. HARRIS), and the Senator from Maine (Mr. MUSKIE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Utah (Mr. BENNETT), the Senator from Arizona (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), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of Illness.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from South Dakota (Mr. MUNDT), the Senator from Illinois (Mr. SMITH), 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 27, nays 42, as follows:

[No. 342 Leg.]

YEAS—27

Allen	Eastland	Holland
Allott	Ellender	Hollings
Baker	Ervin	Jordan, Idaho
Cook	Fannin	Long
Cooper	Fulbright	Saxbe
Cotton	Gore	Spong
Curtis	Griffin	Talmadge
Dole	Gurney	Thurmond
Dominick	Hansen	Williams, Del.

NAYS—42

Anderson	Hughes	Pastore
Bayh	Jackson	Pearson
Bible	Javits	Pell
Boggs	Kennedy	Percy
Brooke	Mansfield	Prouty
Burdick	Mathias	Proxmire
Byrd, W. Va.	McClellan	Randolph
Case	McGovern	Schweiker
Church	McIntyre	Scott
Cranston	Metcalf	Smith, Maine
Eagleton	Miller	Stevens
Fong	Mondale	Symington
Hart	Nelson	Williams, N.J.
Hatfield	Packwood	Young, N. Dak.

NOT VOTING—31

Aiken	Hruska	Ribicoff
Bellmon	Inouye	Russell
Bennett	Jordan, N.C.	Smith, Ill.
Byrd, Va.	Magnuson	Sparkman
Cannon	McCarthy	Stennis
Dodd	McGee	Tower
Goldwater	Montoya	Tydings
Goodell	Moss	Yarborough
Gravel	Mundt	Young, Ohio
Harris	Murphy	
Hartke	Muskie	

So Mr. DOMINICK's amendments (No. 977) were rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. WILLIAMS of New Jersey. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SAXBE. Mr. President, will the Senator from Alabama yield?

Mr. ALLEN. Mr. President, for what purpose does the Senator from Ohio wish me to yield to him?

Mr. SAXBE. To offer an amendment.

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Ohio (Mr. SAXBE) for the purpose of calling up an amendment, without losing my right to the floor, as I wish to address some remarks with respect to the bill.

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

The Chair would advise the Senator from Alabama that the amendment of the Senator from Ohio has a time limit on it. Does he wish to yield for that entire period of time?

Mr. ALLEN. I am willing to yield to the Senator from Ohio, provided I do not lose my right to the floor.

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

Mr. SAXBE. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. SAXBE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and I shall proceed to explain it.

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

The amendment reads as follows:

Redesignate Sections 4 through 11 as Sections 5 through 12 respectively.

On page 27, following line 22, add the following:

"SEC. 4(a). Subsections (b) through (j) of section 705 of the Civil Rights Act of 1964 (78 Stat. 258, 259; 42 U.S.C. 2000e-4(a)-(i)) and references thereto are redesignated as subsections (c) through (k), respectively.

(b) Section 705 of such Act is amended by inserting the following new subsection (b):

"(b) There shall be a General Counsel of the Commission who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Commission shall exercise general supervision over all attorneys employed by the Commission (other than trial examiners and legal assistants to Commission members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Commission, in respect of the investigation of charges, conference, conciliation, and persuasion endeavors, issuance of complaints, the prosecution of such complaints before the Commission, and the conduct of litigation as provided in section 706 and 707 and shall have such other duties as the Commission may prescribe or as may be provided by law. In case of a vacancy in the Office of the General Counsel, the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment *sine die* of the session of the Senate in which such nomination was submitted."

On page 52, line 17, strike the words "investigating, conciliating."

On page 53, line 15, redesignate subsection (c) as subsection (d).

On page 53, following line 14, insert as new subsection (c) the following:

"(c) Section 5315 of such title is amended to add, as a new clause (73), the following:

"'(73) General Counsel of the Equal Employment Opportunity Commission.'

"The remaining clauses, beginning with old clause (73), are redesignated accordingly."

Mr. SAXBE. Mr. President, the amendment provides that there be a General Counsel for the Commission, to be appointed by the President and approved by the Senate.

The reason for the amendment is backed by some experience in this field as an attorney general for the State of Ohio, and also by the fact that I believe there should be divided responsibility. In other words, without this amendment we have a court providing its own prosecutor. I cannot help feeling that it is too close together to be within the spirit of justice that we demand in our other courts.

As an attorney general for the State of Ohio, I was an attorney for the Equal Rights Commission there, and I found that without the consultation of general counsel—we were there only in an advisory capacity—we could have prevented many of the legal pitfalls that we wandered into. In this particular instance, the General Counsel would be appointed for a 4-year term by the President. This will give a continuity to a valuable body of law which will be built up, which will be of great value and protect the Commission from the kind of errors that might creep in when they are appointing their own counsel.

I believe that the amendment is acceptable. I certainly feel it will complete and round out the picture we are putting together here on an operative commission.

Mr. JAVITS. Mr. President, we gave assurance to the Senator from Kentucky (Mr. COOPER) that such an amendment, if offered, would be agreeable to me. As the ranking minority member, I think it is a necessary and desirable part of the bill, especially in view of the fact that the Senate has sustained the cease and desist power authority. Therefore, so far as I am concerned, I consider that the Senator from Ohio has rendered a fine service in offering his amendment. It is acceptable.

Mr. WILLIAMS of New Jersey. Mr. President, this approach conforms to the National Labor Relations Board——

Mr. SAXBE. That is correct.

Mr. WILLIAMS of New Jersey. And to the Office of General Counsel. The approach was discussed earlier in colloquy with the Senator from Kentucky (Mr. COOPER). It is interesting that the proponent of the amendment and the Senator from New York both come from backgrounds of being attorneys general in their States. I do not have the benefit of that background or experience but it seems eminently wise to me and I would accept the amendment from my side.

Mr. SAXBE. I thank the Senator from New Jersey. Mr. President, I yield back the remainder of my time.

Mr. WILLIAMS of New Jersey. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. COOK). The question is on agreeing to the amendment of the Senator from Ohio.

The amendment was agreed to.

Mr. ALLEN. Mr. President, I rise in opposition to S. 2453.

This bill is, in truth, one of the most dangerous and most indefensible legislative proposals presented in this Chamber in the short time I have been in the Senate. We are being asked to endorse a blank legislative check to vest in an agency of the Federal Government, the Equal Employment Opportunity Commission, totalitarian authority over employment practices of free enterprise, labor unions, and State and local governments. This bill is deliberately designed to deny basic rights of the American people and to grant special privileges to a few. If enacted, the measure would, in fact, cripple, and in some instances, destroy the very institutions which brought this Nation into being and helped to make it great.

I wish to discuss briefly a few of the ways in which this bill would do violence to our American way of life.

First, the bill brings within its scope all State and local government employees. This is not only an arrogant attempt further to dilute the rights of the States, their institutions, and their sovereignty, but the conclusion is inescap-

able that the measure is aimed at destroying our dual form of government.

The proposals to substitute federally controlled employment practices for State and local personnel systems are in direct violation of the 10th amendment of the Constitution which states:

> The powers not delegated to the United States, nor prohibited to it by the States, are reserved to the States respectively, or to the people.

The proposals are also in violation of the ninth amendment to our Constitution which states:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

I, of course, realize that many of the proponents of S. 2453 regard the ninth and 10th amendments to our Constitution as obsolete, or at best, treat them as mere truisms. I also realize that the rights guaranteed to the States and their people under the Constitution have been severely abused and invaded in recent years. But there is no provision in our Constitution which, by the wildest stretch of the imagination, can provide a legal cover for the extraordinary authority sought in this bill.

If enacted, this bill would permit an agency of the Federal Government and the Federal courts to enter the political field in the appointment of State and Government employees. It is true that many State and local job requirements are, in part, unrelated to the job. But it is wholly in keeping with our political traditions to give our State and local leaders, and our national leaders for that matter, the discretion to give reasonable weight to factors other than job fitness in filling jobs.

Frankly, it is difficult to imagine a more intolerable interference by the Federal Government with the rights of the States than to dictate their employment practices. The States' power over employment practices is basic and essential to the very existence of State sovereignty and, consequently, to our federal system which was devised by our forefathers and which they intended to be held forever sacrosanct by the Bill of Rights. If we deprive the States of their basic functions, it is pointless to maintain that we have a dual form of government.

The bill contains a self-starter provision vesting the Commission with the authority to initiate investigations and inquiries, either on its own motion or whenever an anonymous person or organization merely requests the filing of a charge that an unlawful employment practice has occurred.

There is no requirement of "reasonable cause" as a condition precedent to the filing of a charge; therefore, the Commission is given carte blanche authority to conduct roving inquiries into the private books and records of a company or labor union regardless of whether there is any pre-existing cause for believing there has been a violation of the law.

Under the bill, employers, labor unions and State and local governments would be subject to the issuance of cease-and-desist orders by the Commission. The broad powers sought under the measure represent a radical departure from the concept of American jurisprudence and our cherished legal system of checks and balances. The legislation seeks to make the Commission accuser, prosecutor, judge, and jury all in one.

Mr. President, if this bill should become law, it would give license for a bureaucrat, clothed with all the power of the Federal Government, to come out of Washington and to walk into a business or labor union hiring hall and to dictate to the employer or business agent whom he could employ and whom he could not employ.

There is just one other step which could in any way be worse than the step which I have just described, and that would be to have one of those bureaucrats go into a man's home—his castle—and try to tell him whom he should have around his dining room table or in his living room.

This is not government by law. It is government by the Equal Employment Opportunity Commission, for better or worse.

But this is not all. The bill could also punish first and prove the offense subsequently. It would permit a Federal judge—a single judge acting without a hearing and without any showing by the Government of irreparable injury—to issue a temporary restraining order against the respondent for an alleged unlawful employment practice. We thus see a reversal of the age-old maxim that a man is presumed to be innocent until he is proven guilty.

The temporary restraining order could be followed by a preliminary injunction. The preliminary injunction could require affirmative action on the part of the employer, such as the reinstatement of former employees and the hiring of new employees with back pay.

Under these provisions of the bill, it would be possible, Mr. President, for an American to be imprisoned if he disagreed with the order of a Federal judge, without the benefit of trial by jury.

No wonder the minority report compared the powers sought under this bill with the English Court of the Star Chamber.

The rights which the provisions of S. 2453 seek to deny cannot be dismissed as mere legal technicalities. They are rights indispensable to freedom. They are rights which distinguish a free society from tyranny.

Mr. President, S. 2453 does not create one new job. Other than the additional army of bureaucrats that would be set up, it does not create one new job in private employment. Yet, it is presented to us when unemployment has climbed in our Nation from 3.3 to 5.1 percent in less than a year and a half. At a time when we are desperately trying to fight inflation and keep our economy strong, this bill would create fear and uncertainty, friction and division in the business houses, plants, and factories of America.

Labor organizations would be subject to interference and supervision of their internal affairs. Their cherished programs of seniority and apprenticeship would be destroyed. And the law which tells the employer who his workers shall be today can be reversed and the worker told who his employer shall be tomorrow—and where and at what wages.

Mr. President, there are other sections and purposes of S. 2453 equally obnoxious as those I have just discussed. For example, the provisions relating to the appointment of attorneys, attorneys' fees, and precomplaint expenses of the aggrieved person are shocking.

The bill also seeks to change the present law by increasing the time within which a charge can be filed from 90 days from the date of the act complained of to 180 days from that date. I would like to know the basis for this change. Surely, anyone who may have been the victim of an unlawful employment practice will know of the fact within 3 months from the date of the commission of the act. The privilege of filing a charge is free of cost and the procedure is simple. Why should a complainant be allowed and encouraged to sleep on his rights.

Take a situation whereby the Commission or the Court is allowed to award back pay. In the case of an applicant for employment, a charging party might choose to wait the extra 90 days and receive a windfall. In other words, by simply waiting until the 179th day, he could receive nearly 6 months' pay without ever having worked a single day for it.

This legislation would also create a vast new bureaucracy inasmuch as the Commission does not now have the manpower, so it says, to carry out the programs called for under the legislation. I would like to have some figures presented to the Senate as to how many lawyers, hearing examiners, investigators, and supporting staff would be added to the Commission to enable it to develop and exercise the quasi-judicial functions under the bill and how much it would cost the taxpayers of this country.

Mr. President, this is a force bill, pure and simple. Its sole purpose is to gain legislative sanction to the establishment of percentages or quotas in employment on the basis of race. Some people may think that such a requirement would never be imposed on business and labor because of the patent absurdity involved. Less than a decade ago, however, the idea of a racial balance in a public school would have seemed too ridiculous to consider. Yet, today we see schoolchildren in the South and other parts of the country being lugged all over cities and towns to achieve what is considered to be a mathematically satisfactory racial mixture in public schools. The so-called Philadelphia Plan, which the Nixon administration put into effect last year is a flagrant abuse of the provisions of the Civil Rights Act of 1964. This represents the first move toward racial balance in industry and labor.

When we weigh this bill and when we look beyond and behind it and see it in its true and unmasked form, we see that it is at variance with the fundamental concept that our Government should be a government by law and not a government by men. Even a casual reading of the bill removes all question about the thirst for unlimited and unrestrained power which motivated the writing of S.

2453. I hope that the Senate is not prepared to take this drastic step toward an arbitrary and despotic government.

Mr. President, in recent years we have already seen many of our sacred rights laid on the altar of political expediency. This bill would put us well along the way to the erosion of other freedoms we now know and enjoy and on which the American system is built.

Let us return to reason. Let us turn away from the dangers inherent in S. 2453. Let us not be counted among the communicants at the altar of expediency.

Mr. President, I hope that Senate bill 2453 will be defeated by action of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, I rise to engage in colloquy with the manager of the bill, the Senator from New Jersey. I had an amendment which, as I said initially yesterday and earlier today, was one of the items brought up rather strenuously in the committee by the junior Senator from Illinois (Mr. SMITH). He is, unfortunately, unable to be here today.

Rather than bring up the amendment which, in effect, would eliminate the jurisdiction of the EEOC over local and State employees, I think it would be better if I were to simply engage in a colloquy with the manager of the bill as to its intent.

The bill, as I read it, states on page 31 that—

> In the case of any charge filed by an officer or employee of the commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local board prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the commission shall, before taking any action with respect to such charge notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than 60 days.

Except the period shall be 120 days during the first year of the operation.

Is my understanding correct that this waiver of initial jurisdiction to the State agency would apply to any charges filed by State or local employees, as well as the charges filed against employers?

Mr. WILLIAMS of New Jersey. That is correct; the provision would apply to charges by State or local employees.

Mr. DOMINICK. I Bring it up only because there are some 39 States, including my State, which have ongoing commissions and which are undertaking very strenuous efforts to try to eliminate discrimination, not only in private employment practices, but among State and local employees.

As the Senator knows there are 10 million State and local employees involved in this, which will be added to the jurisdiction of the Commission by this bill. So it does become a matter of some concern in a great number of areas whether all the efforts the States have made are about to go down the drain.

I gather from the manager of the bill that it is not the intent to supersede those agencies but only to act in the event they are put up as a front to evade their equal employment obligations.

Mr. WILLIAMS of New Jersey. That is correct; and they will not be superseded.

Mr. DOMINICK. I appreciate this colloquy and I think this will reinforce the wording of the bill as far as the intent of the manager and others is concerned.

I thank the Senator.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ERVIN. Mr. President, I wish to speak generally in opposition to the bill. As all Senators know I have been extremely busy during this session of Congress. I did not have adequate opportunity to make a study of the bill until comparatively recently. I must confess that although it is almost impossible to shock me with legislative proposals any more, I was truly shocked when I read the contents of this bill. They are, indeed, enough to make linguistic and constitutional angels weep.

We have a federal system of government and at one time we had a Constitution which had some meaning. The 10th amendment to the Constitution, which is part of the Bill of Rights, had some relevancy to the federal system of government which the Constitution was ordained to establish.

Amendment 10 to the Constitution states:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This bill proposes for the first time in American history to give a Federal agency, a Federal agency which is appointed and not elected, a Federal agency which cannot be held responsible by anyone, the right to regulate, for all practical intents and purposes, State employment practices.

Frankly, there is nothing in the bill which draws any line between an officer of a State and an employee of a State. I do not know how far the commission which is to administer this bill is to go in trying to dictate to the people of the States as to how many of their appointed officers are employees. I say it is a destruction of the federal system of government for an agency of the United States to undertake to regulate, under the terms of this bill—the employment practices of a State. Such has never been the case.

Under this bill, as I interpret it, the EEOC could absolutely dictate in substance to a local sheriff whom he had to appoint as deputy sheriff. It could go into the Supreme Court of North Carolina and undertake to tell the Supreme Court of North Carolina whom it had to hire as clerk, as librarian, as marshal, or as messenger. In simple terms that is how far this bill goes.

The bill is destructive of the federal system of government because it is not compatible with the federal system to allow the Federal Government to dictate to a State who is to be hired, who is to be promoted, and who is to be fired by the State. As a matter of fact, under the vast powers given the EEOC in this bill, it can even dictate to a State what pay it must give to individual State employees. It can dictate its personal notions about discrimination. It can tell the State highway commission in the State whom they must hire, whom they must promote, and whom they must discharge. It is given absolute power and jurisdiction over all State employees.

There was a time in this Nation when it was said that our Constitution and all of its provisions looks to an indestructible union composed of industructible States. I know of no better way to destroy the States than to rob them of their powers; and I know of no more effective way to rob them of their powers than to let an agency of the Federal Government such as EEOC, be given the vast powers that this bill would give them to regulate, supervise, and control State hiring practices.

Not only does this bill give the Equal Employment Opportunity Commission control over the hiring, the promotions, the pay, the terms of employment and firing of State employees but it also goes further than that. It arrogates to this Commission the power to control all the hiring practices of every university in this land. Academic freedom will be in peril.

Under the original Civil Rights Act of 1964, there was an exemption granted to educational institutions which provided, in substance, that the Commission could not interfere with the hiring, the promotion, the firing, or compensation or terms of employment of any persons hired by an educational institution to assist it in carrying out its educational purposes.

This bill would destroy that exemption and it would give this Federal agency sitting on the banks of the Potomac River the power to tell every educational institution in the United States whom they could hire to be professor of mathematics, or whom they could promote from the lower position of instructor to that of assistant professor, or promote from assistant professor to associate professor, or promote to a full professorship.

At one time I was a trustee of a splendid liberal arts college in North Carolina known as Davidson. It was founded by Scotch-Irish Presbyterians and supported by the Presbyterian Church. It had a regulation, which I presume is still in effect, that it would not hire a professor to teach any course at that institution unless he was a member of an Evangelical Church.

Mr. JAVITS. Mr. President, will the Senator yield to me for the purpose of asking unanimous consent that we may have a quorum call and that the Senator from North Carolina may regain the floor immediately after the quorum call is concluded?

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, I ask

unanimous consent that the order for the quorum call be rescinded.

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

Mr. ERVIN. Mr. President, I think in any free society, if the members of the Presbyterian Church, or the members of the Catholic Church, or the members of the Lutheran Church, or the members of any other religious body see fit to establish, through their own resources, an institution of learning for the instruction of youth, and they want the youth of that institution to be taught by persons they regard as Christian professors, even in nonreligious subjects such as mathematics or trigonometry or philosophy, they should have the unqualified right to do that.

Yet the bill before the Senate will take away from institutions like Davidson College the right to select professors who are members of evangelical churches because that would be discriminating against other professors on account of their religion. The Equal Opportunity Employment Commission, under this bill, could actually require the Board of Trustees of Davidson College to hire a Mohammedan, for example, to instruct the youth attending the college.

That is the extent of the tyranny which this bill would inflict upon the people of America. We might as well recognize it. This is the most tyrannical legislative proposal ever submitted to the Congress of the United States. It virtually destroys the States. It destroys the right of people to exercise their religion, because that is exactly what these denominational colleges are doing when they make a requirement that professors shall be members of a particular church, even though they are teaching nonreligious subjects.

There is another provision in this bill to which I want to call attention. Under the due process clause of the Constitution of the United States, and particularly the fifth amendment, which applies to the Federal Government, and also the 14th amendment, which applies to the States, it is a denial of due process to unite in one body the function of prosecution and the function of a judge.

The bill provides that the members of the Commission, if they desire, can file charges, but whether they file those charges of discrimination or those charges are filed by someone else, they must investigate them, then they must prefer charges of their own if the original charge is filed by some individual, then they must collect the testimony, then they must try the case, then they must hand down the decision which can take away the property of other persons. That is a uniting of the function of a judge and jury in one body. It is a denial of due process of law. It is a rank distortion, perversion, and prostitution of the due process clause.

I wish to point out that one of the recent commentaries upon the Constitution of the United States, volume 1, entitled "Rights of the Person," by Bernard Schwartz, contains a discussion of this subject on pages 91 through 94, and points out the fact that:

Basic to the exercise by our courts of the authority to impose restraints upon the person as a penalty for the commission of criminal offenses is the notion of fair trial before an impartial judicial tribunal. If the individual concerned has not been afforded such fair trial before his conviction, it is obvious that he has not been afforded due process of law.

Further reading:

The requirement of an impartial tribunal has been termed "the first and most fundamental principle of natural justice."

In the case of *Wong Yang Sung* v. *McGrath*, reported in 339 U.S. at page 33, which involved the deportation of a person of Chinese ancestry, the Supreme Court pointed out that the action taken there was unconstitutional because there was united in the same Immigration authorities the office of prosecutor and the office of judge. I ask unanimous consent that the entire opinion in this case be printed in the body of the Record.

There being no objection, the opinion was ordered to be printed in the Record, as follows:

WONG YANG SUNG AGAINST MCGRATH, ATTORNEY GENERAL, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

(No. 154. Argued December 6, 1949.—Decided February 20, 1950.)

1. Administrative hearings in proceedings for the deportation of aliens must conform to the requirements of the Administrative Procedure Act, 5 U.S.C. §§ 1001 *et seq.* Pp. 35–53.

2. The history of this Act discloses that it is remedial legislation which should be construed, so far as its text permits, to give effect to its remedial purposes where the evils it was aimed at appear. Pp. 36–41.

3. One of the fundamental purposes of the Act was to ameliorate the evils resulting from the practice of commingling in one person the duties of prosecutor and judge. Pp. 41–45, 46.

4. A hearing in a proceeding for the deportation of an alien was presided over by a "presiding inspector" of the Immigration Service, who had not investigated that particular case but whose general duties included the investigation of similar cases. There being no "examining inspector" present to conduct the prosecution, it was the duty of the "presiding inspector" to conduct the interrogation of the alien and the Government's witnesses, cross-examine the alien's witnesses, and "present such evidence as is necessary to support the charges in the warrant of arrest." It might become his duty to lodge an additional charge against the alien and hear the evidence on that charge. After the hearing, he was required to prepare a summary of the evidence, proposed findings of fact, conclusions of law, and a proposed order, for the consideration of the Commissioner of Immigration. *Held:* This was contrary to the purpose of the Administrative Procedure Act to ameliorate the evils resulting from a combination of the prosecuting and adjudicating functions in administrative proceedings. Pp. 45–48.

5. Section 5 of the Administrative Procedure Act, which establishes certain formal requirements for every "adjudication required by statute to be determined on the record after opportunity for agency hearing," applies to deportation proceedings conducted by the Immigration Service, although the Immigration Act contains no express requirement for hearings in deportation proceedings. Pp. 48–51.

(a) The limitation of § 5 of the Administrative Procedure Act to hearings "required by statute" does not exempt hearings held by compusion but only those which administrative agencies may hold by regulation, rule, custom, or special dispensation. P. 50.

(b) They do not exempt hearings the requirement for which has been read into a statute by this Court in order to save the statute from constitutional invalidity. Pp. 50–51.

6. The exception in § 7(a) of the Administrative Procedure Act of proceedings before "officers specially provided for by or designated pursuant to statute" does not exempt deportation hearings held before immigrant inspectors. Pp. 51–53.

(a) Nothing in the Immigration Act specifically provides that immigrant inspectors shall conduct deportation hearings or be designated to do so. Pp. 51–52.

84 U.S. App. D.C. 419, 184 F. 2d 158, reversed.

In a habeas corpus proceeding, the District Court held that the Administrative Procedure Act of June 11, 1946, 60 Stat. 237, 5 U.S.C. §§ 1001 *et seq.*, does not apply to deportation hearings. 80 F., Supp. 235. The Court of Appeals affirmed. 84 U.S. App. D.C. 419, 174 F. 2d 158. This Court granted certiorari. 338 U.S. 812. *Reversed*, p. 53.

Irving Jaffe argued the cause for petitioner. With him on the brief were *Jack Wasserman, Gaspare Cusumano* and *Thomas A. Farrell.*

Robert W. Ginnane argued the cause for respondents. With him on the brief were *Solicitor General Perlman, Assistant Attorney General Campbell, Robert S. Erdahl, L. Paul Winings* and *Charles Gordon.*

Wendell Berge, A. Alvis Layne, Jr. and *John B. Gage* filed a brief for Riss & Co., Inc., as *amicus curiae*, supporting petitioner.

MR. JUSTICE JACKSON delivered the opinion of the Court.

This *habeas corpus* proceeding involves a single ultimate question—whether administrative hearings in deportation cases must conform to requirements of the Administrative Procedure Act of June 11, 1946, 60 Stat. 237, 5 U.S.C. §§ 1001 *et seq.*

Wong Yang Sung, native and citizen of China, was arrested by immigration officials on a charge of being unlawfully in the United States through having overstayed shore leave as one of a shipping crew. A hearing was held before an immigrant inspector who recommended deportation. The Acting Commissioner approved; and the Board of Immigration Appeals affirmed.

Wong Yang Sung then sought release from custody by *habeas corpus* proceedings in District Court for the District of Columbia, upon the sole ground that the administrative hearing was not conducted in conformity with §§ 5 and 11 of the Administrative Procedure Act.[1] The Government admitted noncompliance, but asserted that the Act did not apply. The court, after hearing, discharged the writ and remanded the prisoner to custody, holding the Administrative Procedure Act inapplicable to deportation hearings. 80 F. Supp. 235. The Court of Appeals affirmed. 84 U.S. App. D.C. 419, 174 F. 2d 158. Prisoner's petition for certiorari was not opposed by the Government and, because the question presented has obvious importance in the administration of the immigration laws, we granted review. 338 U.S. 812.

I

The Administrative Procedure Act of June 11, 1946, *supra*, is a new, basic and comprehensive regulation of procedures in many agencies, more than a few of which can advance arguments that its generalities should not or do not include them. Determination of questions of its coverage may well be approached through consideration of its purposes as disclosed by its background.

Multiplication of federal administrative agencies and expansion of their functions to include adjudications which have serious impact on private rights has been one of the dramatic legal developments of the past half-century.[2] Partly from restriction by

Footnotes at end of article.

statute, partly from judicial self-restraint, and partly by necessity—from the nature of their multitudinous and semilegislative or executive tasks—the decisions of administrative tribunals were accorded considerable finality, and especially with respect to fact finding.[3] The conviction developed, particularly within the legal profession, that this power was not sufficiently safeguarded and sometimes was put to arbitrary and biased use.[4]

Concern over administrative impartiality and response to growing discontent was reflected in Congress as early as 1929, when Senator Norris introduced a bill to create a separate administrative court.[5] Fears and dissatisfactions increased as tribunals grew in number and jurisdiction, and a succession of bills offering various remedies appeared in Congress.[6] Inquiries into the practices of state agencies, which tended to parallel or follow the federal pattern, were instituted in several states, and some studies noteworthy for thoroughness, impartiality and vision resulted.[7]

The Executive Branch of the Federal Government also became concerned as to whether the structure and procedure of these bodies was conducive to fairness in the administrative process. President Roosevelt's Committee on Administrative Management in 1937 recommended complete separation of adjudicating functions and personnel from those having to do with investigation or prosecution.[8] The President early in 1939 also directed the Attorney General to name "a committee of eminent lawyers, jurists, scholars, and administrators to review the entire administrative process in the various departments of the executive Government and to recommend improvements, including the suggestion of any needed legislation."[9]

So strong was the demand for reform, however, that Congress did not await the Committee's report but passed what was known as the Walter-Logan bill, a comprehensive and rigid prescription of standardized procedures for administrative agencies.[10] This bill was vetoed by President Roosevelt December 18, 1940,[11] and the veto was sustained by the House.[12] But the President's veto message made no denial of the need for reform. Rather it pointed out that the task of the Committee, whose objective was "to suggest improvements to make the process more workable and more just," had proved "unexpectedly complex." The President said, "I should desire to await their report and recommendations before approving any measure in this complicated field."[13]

The committee divided in its views and both the majority and the minority submitted bills[14] which were introduced in 1941. A subcommittee of the Senate Judiciary Committee held exhaustive hearings on three proposed measures,[15] but, before the gathering storm of national emergency and war, consideration of the problem was put aside. Though bills on the subject reappeared in 1944,[16] they did not attract much attention.

The McCarran-Sumners bill, which evolved into the present Act, was introduced in 1945.[17] Its consideration and hearing, especially of agency interests, was painstaking. All administrative agencies were invited to submit their views in writing. A tentative revised bill was then prepared and interested parties again were invited to submit criticisms.[18] The Attorney General named representatives of the Department of Justice to canvass the agencies and report their criticisms, and submitted a favorable report on the bill as finally revised.[19] It passed both Houses without opposition and was signed by President Truman June 11, 1946.[20]

The Act thus represents a long period of study and strife; it settles long-continued and hard-fought contentions, and enacts a formula upon which opposing social and political forces have come to rest. It contains many compromises and generalities and, no doubt, some ambiguities. Experience may reveal defects. But it would be a disservice to our form of government and to the administrative process itself if the courts should fail, so far as the terms of the Act warrant, to give effect to its remedial purposes where the evils it was aimed at appear.

II

Of the several administrative evils sought to be cured or minimized, only two are particularly relevant to issues before us today. One purpose was to introduce greater uniformity of procedure and standardization of administrative practice among the diverse agencies whose customs had departed widely from each other.[21] We pursue this no further than to note that any exception we may find to its applicability would tend to defeat this purpose.

More fundamental, however, was the purpose to curtail and change the practice of embodying in one person or agency the duties of prosecutor and judge. The President's Committee on Administrative Management voiced in 1937 the theme which, with variations in language, was reiterated throughout the legislative history of the Act. The Committee's report, which President Roosevelt transmitted to Congress with his approval as "a great document of permanent importance,"[22] said:

". . . the independent commission is obliged to carry on judicial functions under conditions which threaten the impartial performance of that judicial work. The discretionary work of the administrator is merged with that of the judge. Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible.

"Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the commission, in the role of prosecutor, presented to itself." Administrative Management in the Government of the United States, Report of the President's Committee on Administrative Management, 36–37 (1937).

The Committee therefore recommended a redistribution of functions within the regulatory agencies. "[I]t would be divided into an administrative section and a judicial section" and the administrative section "would formulate rules, initiate action, investigate complaints . . ." and the judicial section "would sit as an impartial, independent body to make decisions affecting the public interest and private rights upon the basis of the records and findings presented to it by the administrative section." Id. at 37.

Another study was made by a distinguished committee named by the Secretary of Labor, whose jurisdiction at the time included the Immigration and Naturalization Service. Some of the committee's observations have relevancy to the procedure under examination here. It said:

"The inspector who presides over the formal hearing is in many respects comparable to a trial judge. He has, at a minimum, the function of determining—subject to objection on the alien's behalf—what goes into the written record upon which decision ultimately is to be based. Under the existing practice he has also the function of counsel representing the moving party—he does not merely admit evidence against the alien; he has the responsibility of seeing that such evidence is put into the record. The precise scope of his appropriate functions is the first question to be considered." The Secretary of Labor's Committee on Administrative Procedure, The Immigration and Naturalization Service, 77 (Mimeo. 1940).

Further:

"Merely to provide that in particular cases different inspectors shall investigate and hear is an insufficient guarantee of insulation and independence of the presiding official. The present organization of the field staff not only gives work of both kinds commonly to the same inspector but tends toward an identity of viewpoint as between inspectors who are chiefly doing only one or the other kind of work. . . .

". . . We recommend that the presiding inspectors be relieved of their present duties of presenting the case against aliens and be confirmed [sic] entirely to the duties customary for a judge. This, of course, would require the assignment of another officer to perform the task of a prosecuting attorney. The appropriate officer for this purpose would would seem to be the investigating inspector who, having prepared the case against the alien, is already thoroughly familiar with it. . . .

"A genuinely impartial hearing, conducted with critical detachment, is psychologically improbable if not impossible, when the presiding officer has at once the responsibility of appraising the strength of the case and of seeking to make it as strong as possible. Nor is complete divorce between investigation and hearing possible so long as the presiding inspector has the duty himself of assembling and presenting the results of the investigation. . . ." *Id.* at 81–82.

And the Attorney General's Committee on Administrative Procedure, which divided as to the appropriate remedy,[23] was unanimous that this evil existed. Its Final Report said:

"These types of commingling of functions of investigation or advocacy with the function of deciding are thus plainly undesirable. But they are also avoidable and should be avoided by appropriate internal division of labor. For the disqualifications produced by investigation or advocacy are personal psychological ones which result from engaging in those types of activity; and the problem is simply one of isolating those who engage in the activity. Creation of independent hearing commissioners insulated from all phases of a case other than hearing and deciding will, the Committee believes, go far toward solving this problem at the level of the initial hearing provided the proper safeguards are established to assure the insulation . . ." Rep. Atty. Gen. Comm. Ad. Proc. 56 (1941), S. Doc. No. 8, 77th Cong., 1st Sess. 56 (1941).

The Act before us adopts in general this recommended form of remedial action. A minority of the Committee had, furthermore, urged an even more thoroughgoing separation and supported it with a cogent report. *Id.* at 203 *et seq.*

Such were the evils found by disinterested and competent students. Such were the facts before Congress which gave impetus to the demand for the reform which this Act was intended to accomplish. It is the plain duty of the courts, regardless of their views of the wisdom or policy of the Act, to construe this remedial legislation to eliminate, so far as its text permits, the practices it condemns.

III

Turning now to the case before us, we find the administrative hearing a perfect exemplification of the practices so unanimously condemned.

This hearing, which followed the uniform practice of the Immigration Service,[24] was before an immigrant inspector, who, for purposes of the hearing, is called the "'presiding inspector." Except with consent of the alien, the presiding inspector may not be the one who investigated the case. 8 C.F.R. 150.6 (b).[25] But the inspector's duties include investigation of like cases; and while he is to-

Footnotes at end of article.

day hearing cases investigated by a colleague, tomorrow his investigation of a case may be heard before the inspector whose case he passes on today. An "examining inspector" may be designated to conduct the prosecution, 8 C.F.R. 150.6(n), but none was in this case; and, in any event, the examining inspector also has the same mixed prosecutive and hearing functions. The presiding inspector, when no examining inspector is present, is required to "conduct the interrogation of the alien and the witnesses in behalf of the Government and shall cross-examine the alien's witnesses and present such evidence as is necessary to support the charges in the warrant of arrest." 8 C.F.R. 150.6(b). It may even become his duty to lodge an additional charge against the alien and proceed to hear his own accusation in like manner. 8 C.F.R. 150.6(l). Then, as soon as practicable, he is to prepare a summary of the evidence, proposed findings of fact, conclusions of law, and a proposed order. A copy is furnished the alien or his counsel, who may file exceptions and brief, 8 C.F.R. 150.7, whereupon the whole is forwarded to the Commissioner. 8 C.F.R. 150.9.

The Administrative Procedure Act did not go so far as to require a complete separation of investigating and prosecuting functions from adjudicating functions. But that the safeguards it did set up were intended to ameliorate the evils from the commingling of functions as exemplified here is beyond doubt. And this commingling, if objectionable anywhere, would seem to be particularly so in the deportation proceeding, where we frequently meet with a voteless class of litigants who not only lack the influence of citizens, but who are strangers to the laws and customs in which they find themselves involved and who often do not even understand the tongue in which they are accused. Nothing in the nature of the parties or proceedings suggests that we should strain to exempt deportation proceedings from reforms in administrative procedure applicable generally to federal agencies.

Nor can we accord any weight to the argument that to apply the Act to such hearings will cause inconvenience and added expense to the Immigration Service. Of course it will, as it will to nearly every agency to which it is applied. But the power of the purse belongs to Congress, and Congress has determined that the price for greater fairness is not too high. The agencies, unlike the aliens, have ready and persuasive access to the legislative ear and if error is made by including them, relief from Congress is a simple matter.

This brings us to contentions both parties have advanced based on the pendency in Congress of bills to exempt this agency from the Act. Following an adverse decision,[26] the Department asked Congress for exempting legislation,[27] which appropriate committees of both Houses reported favorably but in different form and substance.[28] Congress adjourned without further action. The Government argues that Congress knows that the Immigration Service has construed the Act as not applying to deportation proceedings, and that it "has taken no action indicating disagreement with that interpretation"; that therefore it "is at least arguable that Congress was prepared to specifically confirm the administrative construction by clarifying legislation." We do not think we can draw that inference from incompleted steps in the legislative process. *Cf. Helvering* v. *Hallock*, 309 U.S. 106, 119–120.

On the other hand, we will not draw the inference, urged by petitioner, that an agency admits that it is acting upon a wrong construction by seeking ratification from Congress. Public policy requires that agencies feel free to ask legislation which will terminate or avoid adverse contentions and litigations. We do not feel justified in holding that a request for and failure to get in a single session of Congress clarifying legislation on a genuinely debatable point of agency procedure admits weakness in the agency's contentions. We draw, therefore, no inference in favor of either construction of the Act—from the Department's request for legislative clarification, from the congressional committees' willingness to consider it, or from Congress' failure to enact it.

We come, then, to examination of the text of the Act to determine whether the Government is right in its contentions: first, that the general scope of § 5 of the Act does not cover deportation proceedings; and, second, that even if it does, the proceedings are excluded from the requirements of the Act by virtue of § 7.

IV

The Administrative Procedure Act, § 5, establishes a number of formal requirements to be applicable "In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing." The argument here depends upon the words "adjudication required by statute." The Government contends that there is no express requirement for any hearing or adjudication in the statute authorizing deportation,[29] and that this omission shields these proceedings from the impact of § 5. Petitioner, on the other hand, contends that deportation hearings, though not expressly required by statute, are required under the decisions of this Court,[30] and the proceedings, therefore, are within the scope of § 5.

Both parties invoke many citations to legislative history as to the meaning given to these key words by the framers, advocates or opponents of the Administrative Procedure Act. Because § 5 in the original bill applied to hearings required "by law,"[31] because it was suggested by the Attorney General that it should be changed to "required by statute or Constitution,"[32] and because it finally emerged "required by statute," the Government argues that the section is intended to apply only when explicit statutory words granting a right to adjudication can be pointed out. Petitioner on the other hand cites references which would indicate that the limitation to statutory hearing was merely to avoid creating by inference a new right to hearings where no right existed otherwise. We do not know. The legislative history is more conflicting than the text is ambiguous.

But the difficulty with any argument premised on the proposition that the deportation statute does not require a hearing is that, without such hearing, there would be no constitutional authority for deportation. The constitutional requirement of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body. It was under compulsion of the Constitution that this Court long ago held that an antecedent deportation statute must provide a hearing at least for aliens who had not entered clandestinely and who had been here some time even if illegally. The Court said:

"This is the reasonable construction of the acts of Congress here in question, and they need not be otherwise interpreted. In the case of all acts of Congress, such interpretation ought to be adopted as, without doing violence to the import of the words used, will bring them into harmony with the Constitution." *The Japanese Immigrant Case*, 189 U.S. 86, 101.

We think that the limitation to hearings "required by statute" in § 5 of the Administrative Procedure Act exempts from that section's application only those hearings which administrative agencies may hold by regulation, rule, custom, or special dispensation; not those held by compulsion. We do not think the limiting words render the Administrative Procedure Act inapplicable to hearings, the requirement for which has been read into a statute by the Court in order to save the statute from invalidity. They exempt hearings of less than statutory authority, not those of more than statutory authority. We would hardly attribute to Congress a purpose to be less scrupulous about the fairness of a hearing necessitated by the Constitution than one granted by it as a matter of expediency.

Indeed, to so construe the Immigration Act might again bring it into constitutional jeopardy. When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets at least currently prevailing standards of impartiality. A deportation hearing involves issues basic to human liberty and happiness and, in the present upheavals in lands to which aliens may be returned, perhaps to life itself. It might be difficult to justify as measuring up to constitutional standards of impartiality a hearing tribunal for deportation proceedings the like of which has been condemned by Congress as unfair even where less vital matters of property rights are at stake.

We hold that the Administrative Procedure Act, § 5, does cover deportation proceedings conducted by the Immigration Service.

V

The remaining question is whether the exception of § 7(a) of the Administrative Procedure Act exempts deportation hearings held before immigrant inspectors. It provides:

"SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

"(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. . . ." 60 Stat. 237, 241, 5 U.S.C. § 1006.

The Government argues that immigrant inspectors are "specially provided for by or designated pursuant to" § 16 of the Immigration Act, which, in pertinent part, reads:

". . . The inspection . . . of aliens, including those seeking admission or readmission to or the privilege of passing through or residing in the United States, and the examination of aliens arrested within the United States under this Act,[33] shall be conducted by immigrant inspectors, except as hereinafter provided in regard to boards of special inquiry. . . . Said inspectors shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States, and, where such action may be necessary, to make a written record of such evidence; . . ." 39 Stat. 874, 885, as amended, 8 U.S.C. § 152.

Certainly nothing here specifically provides that immigrant inspectors shall conduct deportation hearings or be designated to do so. This language does direct them to conduct border inspections of aliens seeking admission. They may administer oaths and take, record, and consider evidence. But these functions are indispensable to investigations which are concededly within their competence. And these functions are likewise necessary to enable the preparation of complaints for prosecutive purposes. But that Congress by grant of these powers has specially constituted them or provided for their designation as hearing officers in deportation proceedings does not appear.

Section 7(a) qualifies as presiding officers at hearings the agency and one or more of the members of the body comprising the

Footnotes at end of article.

agency, and it also leaves untouched any others whose responsibilities and duties as hearing officers are established by other statutory provision. But if hearings are to be had before employees whose responsibility and authority derives from a lesser source, they must be examiners whose independence and tenure are so guarded by the Act as to give the assurances of neutrality which Congress thought would guarantee the impartiality of the administrative process.

We find no basis in the purposes, history or text of this Act for judicially declaring an exemption in favor of deportation proceedings from the procedural safeguards enacted for general application to administrative agencies. We hold that deportation proceedings must conform to the requirements of the Administrative Procedure Act if resulting orders are to have validity. Since the proceeding in the case before us did not comply with these requirements, we sustain the writ of habeas corpus and direct release of the prisoner.[34]

[Reversed]

MR. JUSTICE DOUGLAS and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

MR. JUSTICE REED, dissenting.

The Court, it seems to me, has disregarded a congressional exemption of certain agencies, including the Immigration and Naturalization Service, from some of the requirements of the Administrative Procedure Act. Such judicial intrusion into the legislative domain justifies a protest. It may be useful to call attention to the necessity of recognizing specific exceptions to general rules. This protest is rested on the ground that immigrant inspectors performing duties under § 16 of the Immigration Act are within the exception provided by § 7(a) of the Administrative Procedure Act. The Court's opinion discusses this point under subdivision V. The sections are there set out and can be examined by the reader.

In this case no one questions the constitutionality of the hearing Wong received before the immigrant inspector, with administrative review by the Commissioner and the Board of Immigration Appeals. The question on which I disagree with the Court is whether the Administrative Procedure Act permits an inspector of the Immigration and Naturalization Service to serve as a presiding officer at a deportation hearing.

Section 7(a) of the Administrative Procedure Act provides that the official presiding at the taking of evidence shall be an agency, member or an examiner appointed under that Act. There is an exception to this requirement. It reads as follows:

"BUT nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute." It is this exception that made it proper for an immigrant inspector to preside at this deportation hearing.

Under § 16 of the Immigration Act, 39 Stat. 874, 885, the "inspection . . . of aliens, including those seeking admission or readmission to or the privilege of passing through or residing in the United States, and the examination of aliens arrested within the United States under this Act, shall be conducted by immigrant inspectors, ... Said inspectors shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States, and, where such action may be necessary to make a written record of such evidence; . . . ."

It seems to me obvious that the exception provided in § 7 (a) covers immigrant inspectors dealing with the arrest of an alien for violation of the Immigration Act. The examination of arrested aliens at a deportation proceeding is surely a specified class of proceedings under § 7 (a) of the Administrative Procedure Act, and it is surely conducted by an officer "specially provided for by . . . statute."

The reason for the exception in § 7 (a) was not spelled out in the legislative history or in the Act itself. The exception may have been made to retain smoothness of operation in the several agencies where there were officials specially provided for by statute or designated pursuant to a statute. When making exceptions from the requirements as to separation of the investigatory and adjudicatory functions, it was natural to include officers specially designated by statute to sit in judgment. Agency members are excluded from these requirements of the Administrative Procedure Act. They, too, have investigatory and adjudicatory duties. Since the members of the agency and the statutorily designated officers were specially selected for the functions they were to perform, Congress probably reposed confidence in their experience and expertness. It doubtless did not wish to disorganize administration until time showed whether that confidence was well placed.[35]

Since the Court does not accept my view of the reach of § 7 (a), it would be useless to undertake an analysis of the other questions presented by the petition for certiorari.

FOOTNOTES

[1] Particularly invoked are § 5(c), 60 Stat. 237, 240, 5 U. S. C. § 1004(c), which provides in part:

"The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, so such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. . . ."; and § 11, 60 Stat. at 244, 5 U. S. C. § 1010, which provides in part: "Subject to the civil-service and other laws to the extent not inconsistent with this Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations of ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said Act, as amended, and the provisions of section 9 of said Act, as amended shall not be applicable. . . ."

[2] See *e.g.*, Blachly and Oatman, Administrative Legislation and Adjudication 1 (1934); Landis, The Administrative Process 1 (1938); Pound, Administrative Law 27 (1942); Carrow, The Background of Administrative Law 1 (1948); The Federal Administrative Procedure Act and the Administrative Agencies 4 (N. Y. U. 1947); Final Report of Attorney General's Committee on Administrative Procedure 7 (1941), contained in S. Doc. No. 8, 77th Cong., 1st Sess. (1941); Cushman, The Independent Regulatory Commissions, cc. II–V (1941); Frankfurter, The Task of Administrative Law, 75 U. of Pa. L. Rev. 614 (1927); materials cited in n. 4, *infra*.

[3] See *e.g.*, Dickinson, Administrative Justice and the Supremacy of Law, *passim* (1927); Final Report of Attorney General's Committee on Administrative Procedure, *supra*, at 11–18, 75–92; and see materials cited in n. 4, *infra*.

[4] *E.g.*, Root, Public Service by the Bar, 41 A. B. A. Rep. 355, 368 (1916); Hughes, Some Aspects of the Development of American Law, 39 N. Y. B. A. Rep. 266, 269 (1916); Sutherland, Private Rights and Government Control, 42 A. B. A. Rep. 197, 205 (1917); Address of President Guthrie, 46 N. Y. B. A. Rep. 169, 186 (1923). After 1933, when the American Bar Association formed a Special Committee on Administrative Law, the Bar's concern can be traced in this Committee's reports. *E.g.*, 58 A. B. A. Rep. 197, 407 (1933); 59 A. B. A. Rep. 539 (1934); 61 A. B. A. Rep. 720 (1936); 62 A. B. A. Rep. 789 (1937).

[5] S. 5154, 70th Cong., 2d Sess. (1929).

[6] S. 1835, 73d Cong., 1st Sess. (1933); S. 3787, H.R. 12297, 74th Cong., 2d Sess. (1936); S. 3676, 75th Cong., 3d Sess. (1938); H.R. 6324, H.R. 4235, H.R. 4236, S. 915, S. 916, 76th Cong., 1st Sess. (1939); S. 674, S. 675, S. 918, H.R. 3464, H.R. 4238, H.R. 4782, 77th Cong., 1st Sess. (1941); H.R. 4314, H.R. 5081, HR. 5237, S. 2030, 78th Cong., 2d Sess. (1944); H.R. 1203, S. 7, 79th Cong., 1st Sess. (1945).

[7] *E.g.*, Benjamin, Administrative Adjudication in the State of New York (1942); Tenth Biennial Report of the Judicial Council to the Governor and Legislature of California (1944). See also Fesler, The Independence of State Regulatory Agencies (1942); Handbook of the National Conference of Commissioners on Uniform State Laws, 226 *et seq.* (1943); 63 A. B. A. Rep. 623 (1938).

[8] Administrative Management in the Government of the United States, Report of the President's Committee on Administrative Management 37 (1937).

[9] The quoted statement is from President Roosevelt's message to Congress of December 18, 1940, vetoing H.R. 6324, the so-called Walter-Logan bill. H.R. Doc. No. 986, 76th Cong., 3d Sess., 3–4 (1940). The origin and orders leading to the creation of the Attorney General's Committee are set out in Appendix A of the Committee's Final Report, *supra*.

[10] S. 915, H.R. 6324, 76th Cong., 1st sess. (1939).

[11] 86 Cong. Rec. 13942–3 (1940), reprinted in H.R. Doc. No. 986, 76th Cong., 3d Sess. (1940).

[12] 86 Cong. Rec. 13953 (1940).

[13] 86 Cong. Rec. at 13943; H.R. Doc. No. 986, *supra*, 4.

[14] These bills appear at pp. 192 and 217 of the Committee's Final Report, *supra*. The majority bill became S. 675, 77th Cong., 1st Sess. (1941) and the minority recommendation was embodied in S. 674, 77th Cong., 1st Sess. (1941).

[15] The hearings ran from April 2 to July 2, 1941, and, with an appendix, have been collected in four parts and over 1,600 pages. Hearings before Subcommittee of the Committee on the Judiciary on S. 674, S. 675 and S. 918, 77th Con., 1st Sess. (1941).

[16] H.R. 4314, H.R. 5081, H.R. 5237, S. 2030, 78th Cong., 2d Sess. (1944).

[17] S. 7 and H.R. 1203, 79th Cong., 1st Sess. (1945).

[18] H.R. Rep. No. 1980, 79th Cong., 2d Sess. 14–15 (1946); S. Rep. No. 752, 79th Cong., 1st Sess. 4–5 (1945), reprinted in S. Doc. No. 248, 79th Cong., 2d Sess., at 233, 248–249, and 185, 190–191, respectively.

[19] S. Rep. 752, 79th Cong., 1st Sess. 37–

45 (1945); 92 Cong. Rec. App. A–2982–5 (1946).

[29] 92 Cong. Rec. 2167 (1946) (passage by the Senate); 92 Cong. Rec. 5668 (1946) (amended version passed by House); 92 Cong. Rec. 5791 (1946) (House version agreed to by Senate); 92 Cong. Rec. 6706 (1946) (approved by the President).

[21] H.R. Rep. No. 1980, 79th Cong., 2d Sess. 16 (1946); Final Report of the Attorney General's Committee on Administrative Procedure, 20 (1941); McFarland, Analysis of the Federal Administrative Procedure Act, in Federal Administrative Procedure Act and the Administrative Agencies 16, 22 (N. Y. U. 1947). See also Hearings before Subcommittee No. 4 of the House Committee on the Judiciary on H.R. 4236, H.R. 6198, and H.R. 6324, 76th Cong., 1st Sess. 14, 31 (1939); S. Rep. No. 442, 76th Cong., 1st Sess. 9 (1939); H.R. Rep. No. 1149, 76th Cong., 1st Sess. 2–3 (1939); S. Doc. No. 71, 76th Cong., 1st Sess. 5 (1939).

[22] 81 Cong. Rec. 187, 191 (1937).

[23] See n. 14, *supra*.

[24] See 8 C.F.R. 150.1 *et seq.*

[25] The initial step in a deportation case is the investigation of an alien by an immigrant inspector. 8 C.F.R. 150.1. This is followed by issuance of a warrant of arrest, 8 C.F.R. 150.2–150.4, and incarceration, unless the alien is released under bond. 8 C.F.R. 150.5. The formal hearing follows.

[26] *Eisler* v. *Clark* (D.D.C. 1948), 77 F. Supp. 610.

[27] S. 2755 and H.R. 6652, 80th Cong., 2d Sess. (1948).

[28] S. Rep. No. 1588, H.R. Rep. No. 2140, 80th Cong., 2d Sess. (1948).

[29] Section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 874, 889, as amended, 8 U.S.C. § 155 (a), provides in part: ". . . any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States . . . shall, upon the warrant of the Attorney General, be taken into custody and deported. . . . In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Attorney General shall be final." See Note 33, *infra*.

[30] *The Japanese Immigrant Case*, 189 U.S. 86, 100, 101; *Kwock Jan Fat* v. *White*, 253 U.S. 454, 459, 464; *Bridges* v. *Wixon*, 326 U.S. 135, 160 (concurring opinion).

[31] Section 301 of the bills proposed in the majority annd minority recommendations of the Final Report of the Attorney General's Committee on Administrative Procedure, pp. 195, 232–233.

[32] Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 674, S. 675, and S. 918, 77th Cong., 1st Sess. 1456 (1941).

[33] The original Act, 39 Stat. 896, reads "under this Act," although in the codification, 8 U.S.C. § 152, it reads "under this section." The former is controlling. 1. U. S. C. (Supp. II, 1949) §§ 112, 204 (a).

[34] [For order modifying the judgment, see *post*, p. 908.]

[35] Thus the congressional committee warned that should the exception "be a loophole for avoidance of the examiner system in any real sense, corrective legislation would be necessary. That provision is not intended to permit agencies to avoid the use of examiners but to preserve special statutory types of hearing officers who contribute something more than examiners could contribute and at the same time assure the parties fair and impartial procedure." S. Doc. No. 248, 79th Cong., 2d Sess., p. 216.

Mr. ERVIN. Mr. President, I wish to call the attention of the Senate to another point. In the case of *In Re Murchison*, reported in 349 U.S. at page 133, a trial judge of Michigan, acting under Michigan statute, sat as a one-man grand jury. The two petitioners appeared before him in his capacity as a one-man grand jury. They were accused of conduct which he thought constituted contempt of his court. He proceeded to try them for contempt for their conduct before him as a one-man grand jury, under the statute of Michigan.

The petitioners objected to being tried for contempt by this particular judge for a number of reasons, including, among others, that the trial before the judge who was at the same time the complainant, indicter, and prosecutor, constituted a denial of the fair and impartial trial required by the due process clause of the 14 amendment to the Constitution of the United States.

The Justice Black, writing for a majority of the court, had this to say:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." . . . Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice."

Then again, farther on, on page 137 of the opinion, Justice Black says:

Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer.

The Supreme Court set aside the trial of these two petitioners before the judge on the ground that the judge was acting as prosecutor and judge, and that this was a denial of due process as required under the 14th amendment of the Constitution of the United States.

I ask unanimous consent that the full opinion be printed in the Record at this point.

There being no objection, the opinion was ordered to be printed in the Record, as follows:

[In re Murchison. Opinion of the Court]

IN RE MURCHISON ET AL. CERTIORARI TO THE SUPREME COURT OF MICHIGAN, No. 405. ARGUED APRIL 20, 1955.—DECIDED MAY 16, 1955

A Michigan state judge served as a "one-man grand jury" under Michigan law in investigating crime. Later, the same judge, after a hearing in open court, adjudged two of the witnesses guilty of contempt and sentenced them to punishment for events which took place before him in the grand jury proceedings. *Held:* Their trial and conviction for contempt before the same judge violated the Due Process Clause of the Fourteenth Amendment. Pp. 133–139.

The power of a trial judge to punish for a contempt committed in his immediate presence in open court is not applicable to the contempt proceeding here. P. 137.

340 Mich. 140, 65 N. W. 2d 296, and 340 Mich. 151, 65 N. W. 2d 301, reversed.

William L. Colden argued the cause for petitioners. With him on the brief were *James A. Cobb*, *George E. C. Hayes* and *Charles W. Jones*.

Edmund E. Shepherd, Solicitor General, argued the cause for the State of Michigan, respondent. With him on the brief were *Thomas M. Kavanagh*, Attorney General, and *Daniel J. O'Hara*, Assistant Attorney General.

MR. JUSTICE BLACK delivered the opinion of the Court.

Michigan law authorizes any judge of its courts of record to act as a so-called "one-man grand jury." [1] He can compel witnesses to appear before him in secret to testify about suspected crimes. We have previously held that such a Michigan "judge-grand jury" cannot consistently with the Due Process Clause of the Fourteenth Amendment summarily convict a witness of contempt for conduct in the secret hearings. *In re Oliver*, 333 U.S. 257. We held that before such a conviction could stand, due process requires as a minimum that an accused be given a public trial after reasonable notice of the charges, have a right to examine witnesses against him, call witnesses on his own behalf, and be represented by counsel. The question now before us is whether a contempt proceeding conducted in accordance with these standards complies with the due process requirement of an impartial tribunal where the same judge presiding at the contempt hearing had also served as the "one-man grand jury" out of which the contempt charges arose. This does not involve, of course, the long-exercised power of courts summarily to punish certain conduct occurring in open court.[2]

The petitioners, Murchison and White, were called as witnesses before a "one-man judge-grand jury." Murchison, a Detroit policeman, was interrogated at length in the judge's secret hearings where questions were asked him about suspected gambling in Detroit and bribery of policemen. His answers left the judge persuaded that he had committed perjury, particularly in view of other evidence before the "judge-grand jury." The judge then charged Murchison with perjury and ordered him to appear and show cause why he should not be punished for criminal contempt.[3] White, the other petitioner, was also summoned to appear as a witness in the same "one-man grand jury" hearing. Asked numerous questions about gambling and bribery, he refused to answer on the ground that he was entitled under Michigan law to have counsel present with him. The "judge-grand jury" charged White with contempt and ordered him to appear and show cause. The judge who had been the "grand jury" then tried both petitioners in open court, convicted and sentenced them for contempt. Petitioners objected to being tried for contempt by this particular judge for a number of reasons including: (1) Michigan law expressly provides that a judge conducting a "one-man grand jury" inquiry will be disqualified from hearing or trying any case arising from his inquiry or from hearing any motion to dismiss or quash any complaint or indictment growing out of it, or from hearing any charge of contempt "except alleged contempt for neglect or refusal to appear in response to a summons or subpoena"; (2) trial before the judge who was at the same time the complainant, indicter and prosecutor, constituted a denial of the fair and impartial trial required by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The trial judge answered the first challenge by holding that the state statute barring him from trying the contempt cases violated the Michigan Constitution on the ground that it would deprive a judge of inherent power to punish contempt. This interpretation of the Michigan Constitution

Footnotes at end of article.

is binding here. As to the second challenge the trial judge held that due process did not forbid him to try the contempt charges. He also rejected other constitutional contentions made by petitioners. The State Supreme Court sustained all the trial judge's holdings and affirmed.[4] Importance of the federal constitutional questions raised caused us to grant certiorari.[5] The view we take makes it unnecessary for us to consider or decide any of those questions except the due process challenge to trial by the judge who had conducted the secret "one-man grand jury" proceedings.[6]

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Tumey* v. *Ohio*, 273 U.S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." *Offut* v. *United States*, 348 U.S. 11, 14.

It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. Perhaps no State has ever forced a defendant to accept grand jurors as proper trial jurors to pass on charges growing out of their hearings.[7] A single "judge-grand jury" is even more a part of the accusatory process than an ordinary lay grand juror. Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. While he would not likely have all the zeal of a prosecutor, it can certainly not be said that he would have none of that zeal.[8] Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer.[9] It is true that contempt committed in a trial courtroom can under some circumstances be punished summarily by the trial judge. See *Cooke* v. *United States*, 267 U.S. 517, 539. But adjudication by a trial judge of a contempt committed in his immediate presence in open court cannot be likened to the proceedings here. For we held in the *Oliver* case that a person charged with contempt before a "one-man grand jury" could not be summarily tried.

As a practical matter it is difficult if not impossible for a judge to free himself from the influence of what took place in his "grand-jury" secret session. His recollection of that is likely to weigh far more heavily with him than any testimony given in the open hearings. That it sometimes does is illustrated by an incident which occurred in White's case. In finding White guilty of contempt the trial judge said, "there is one thing the record does not show, and that was Mr. White's attitude, and I must say that his attitude was almost insolent in the manner in which he answered questions and his attitude upon the witness stand. . . . Not only was the personal attitude insolent, but it was defiant, and I want to put that on the record." In answer to defense counsel's motion to strike these statements because they were not part of the original record the judge said, "That is something . . . that wouldn't appear on the record, but it would be very evident to the court." Thus the judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impression of what had occurred in the grand jury room and his judgment was based in part on this impression, the accuracy of which could not be tested by adequate cross-examination.

This incident also shows that the judge was doubtless more familiar with the facts and circumstances in which the charges were rooted than was any other witness. There were no public witnesses upon whom petitioners could call to give disinterested testimony concerning what took place in the secret chambers of the judge. If there had been they might have been able to refute the judge's statement about White's insolence. Moreover, as shown by the judge's statement here, a "judge-grand jury" might himself many times be a very material witness in a later trial for contempt. If the charge should be heard before that judge, the result would be either that the defendant must be deprived of examining or cross-examining him or else there would be the spectacle of the trial judge presenting testimony upon which he must finally pass in determining the guilt or innocence of the defendant.[10] In either event the State would have the benefit of the judge's personal knowledge while the accused would be denied an effective opportunity to cross-examine. The right of a defendant to examine and cross-examine witnesses is too essential to a fair trial to have that right jeopardized in such way.

We hold that it was a violation of due process for the "judge-grand jury" to try these petitioners, and it was therefore error for the Supreme Court of Michigan to uphold the convictions. The judgements are reversed and the causes are remanded for proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE REED and MR. JUSTICE MINTON, dissenting, with whom MR. JUSTICE BURTON joins.

The Court holds that it is unconstitutional for a state judge to punish a contempt, previously committed before him while acting as a so-called one-man grand jury, after a full hearing in open court. It holds that White, in being so punished for his blanket refusal to answer any questions before the grand jury, and Murchison, in being so punished for perjury before the same body, were deprived of their liberty without due process of law.

This conclusion is not rested on any irregularity in the proceedings before either the grand jury or the court. Under Michigan procedure a single state judge makes the grand jury investigation, not in secret, but with other public officials to aid him, and a transcript is made of the testimony. There is certainly nothing unconstitutional about this. A State may reduce the customary number of grand jurors to one, and impart the investigatory duty to a member of its judiciary if it so desires. Further, the accused is afforded a full hearing in open court, with a statement of charges, benefit of counsel, and a full opportunity to explain his conduct before the grand jury, before being held in contempt. Thus all the requirements set down in *In re Oliver*, 333 U.S. 257, are met.

The Court's determination is rested on the sole fact that the same judge first cited petitioners for contempt committed in his presence, and then presided over the proceedings leading to the final adjudication. It is neither shown nor alleged that the state judge was in any way biased. Nor is this required by the Court, for it holds, as a matter of law, that the judge's "interest" in a conviction makes the proceedings inherently prejudicial and thus constitutionally invalid. The fact that the "interest" of the state judge in this procedure is no different from that of other judges who have traditionally punished for contempt leads us to dissent.

In *Sacher* v. *United States*, 343 U.S. 1, we upheld the power of a federal district judge to summarily punish a contempt previously committed in his presence. In that case, after a trial which had extended for some nine months, the trial judge issued a certificate summarily holding defense counsel in contempt for their actions during the trial. There were no formalities, no hearings, no taking of evidence, no arguments and no briefs. We held that such a procedure was permitted by Rule 42 of the Federal Rules of Criminal Procedure which codified the "prevailing usages at law." The Court specifically rejected the contention that the judge who heard the contempt was disqualified from punishing it and should be required to assume the role of accuser or complaining witness before another judge. In *Offutt* v. *United States*, 348 U.S. 11, the Court simply stated an exception: when the trial judge becomes personally embroiled with the contemnor, he must step aside in favor of another judge. That decision was rested upon our supervisory authority over the administration of criminal justice in the federal courts. The Court now holds, even though there is no showing or contention that the state judge became embroiled or personally exercised, or was in any way biased, that as a matter of constitutional law—of procedural due process—a state judge may not punish a contempt previously committed in his presence. This seems inconsistent with all that has gone before.

The Court, presumably referring to the situation in the federal courts, states that the "adjudication by a trial judge of a contempt committed in his immediate presence in open court cannot be likened to the proceedings here." The reason that it cannot, we are told, is because "we held in the *Oliver* case that a person charged with contempt before a 'one-man grand jury' could not be summarily tried." This is hardly explanatory, for the question of whether the hearing is to be summary or plenary has no bearing on the attitude or "interest" of the judges in the two situations, which is indistinguishable. The simple fact is that in the federal courts we allow the same judge who hears the contempt and issues the certificate to punish it subsequently and summarily, but in this case we do not allow such punishment even after a full court trial. The only factual difference between *Sacher* and this case is that the contempt in *Sacher* was committed at a public trial. When the contempt is not committed in open court, we require that the criminal conviction be in public and that the individual be given a full hearing, with an opportunity to defend himself against the charges proffered and to make a record from which to appeal. *In re Oliver*, 333 U.S. 257. Petitioners had all this. They are not entitled to more.

We do not see how it can be held that it violates fundamental concepts of fair play and justice for a state judge after a full court trial to punish a contempt previously observed when acting as a grand jury, when it has been held that it is perfectly proper for a federal judge to summarily punish a contempt previously observed in open court. It seems to us that the Court has imposed a more stringent requirement on state judges as a matter of due process than we have imposed on federal judges over whom we exercise supervisory power.

The Court relies heavily on *Tumey* v. *Ohio*, 273 U.S. 510. There we held that it deprives a defendant of due process to "subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." *Id.*, at 523. It is one thing to hold that a judge has too great an interest in a case

to permit the rendition of a fair verdict when his compensation is determined by the result he reaches. It is quite another thing to disqualify a state judge as having too great an interest to render a due process judgment when his sole interest, as shown by this record, is the maintenance of order and decorum in the investigation of crime—an interest which he shares in common with all judges who punish for contempt.

The State of Michigan has decided that in the administration of its criminal law it is wise to have the investigating power in the hands of a judge. It has also decided that the judge who observes the contempt is to preside at the trial of the contemnor. It does not seem that there is here such a violation of accepted judicial standards as to justify this Court's determination of unconstitutionality.

We would affirm.

FOOTNOTES

[1] Mich. Stat. Ann., 1954 §§ 28.943, 28.944.

[2] *Sacher* v. *United States*, 343 U.S. 1; *Cooke* v. *United States*, 267 U.S. 517, 539; *Ex parte Savin*, 131 U.S. 267. See also *In re Oliver*, 333 U.S. 257, 273–278.

[3] The contempt charge signed by the judge reads in part as follows:

"It therefore appearing . . . that the said Patrolman Lee Roy Murchinson [*sic*] has been guilty of wilfull and corrupt perjury, which perjury has an obstructive effect upon the judicial inquiry being conducted by this court and the said Patrolman Lee Roy Murchinson [*sic*] obstructed the judicial function of the court by wilfully giving false answers as aforesaid, and did also tend to impair the respect for the authority of the court, all of which perjury and false answers given by the said witness aforesaid was committed during the sitting of, in the presence and view of this court and constitutes criminal contempt;

"It is therefore ordered that the said Patrolman Lee Roy Murchinson [*sic*] appear before this court on the tenth day of May, 1954, at 10:00 o'clock in the forenoon and show cause why he should not be punished for criminal contempt of this court because of his aforesaid acts."

[4] *In re White*, 340 Mich. 140, 65 N. W. 2d 296; *In re Murchison*, 340 Mich. 151, 65 N. W. 2d 301.

[5] 348 U.S. 894.

[6] That we lay aside certain other federal constitutional challenges by petitioners is not to be taken as any intimation that we have passed on them one way or another.

[7] See, *e.g.*, Note 50 L. R. A. (N. S.) 933, 953–954, 970, 971.

[8] Apparently the trial judge here did consider himself a part of the prosecution. In passing on a request by Murchison's counsel for a two-day postponement of the contempt trial the judge said, "There are two points that suggest themselves to me.

"One is that if the respondent is going to claim that he was in Shrewsberry, Ontario, Canada, on March 9, 1954, that *we* ought to be furnished with information so that *we* could between now and two days from now, which I am going to give you, *we* could do some checking and investigating *ourselves*." (Emphasis supplied.)

Because of the judge's dual position the view he took of his function is not at all surprising.

[9] See, *e.g.*, *Queen* v. *London County Council*, [1892] 1 Q. B. 190; *Wisconsin ex rel. Getchel* v. *Bradish*, 95 Wis. 205, 70 N. W. 172.

[10] See *Hale* v. *Wyatt*, 78 N. H. 214, 98 A. 379. See also, Witnesses—Competency—Competency of a Presiding Judge as Witness, 28 Harv. L. Rev. 115.

Mr. ERVIN. I have pointed out the fact that here you have a Commission, with all of the persons who work with the Commission under its authority; they are subject to its orders. It acts as an investigator, it acts as a prosecutor, it acts as a jury, it acts as a judge, and I might say it acts as an executioner also—in the year of our Lord 1970.

This bill in its operation, would virtually destroy the federal system, because it would give to a Federal agency complete authority over the hiring practices of States. It would give them the authority to determine who is to be professor of mathematics, who is to be professor of philosophy, and who is to be professor of any other course of study of any institution anywhere in our land, notwithstanding that such institution may be private, and notwithstanding the fact that such institution may be supported by a religious denomination. I submit that that is clearly a spiritual and constitutional violation of the provision of the first amendment which undertakes to give to every person the right to freedom of worship and religion.

Not only that, this bill is honeycombed with numerous bad procedural provisions. It gives the Equal Employment Opportunity Commission the right to appoint counsel for the claimants. It gives them the right to finance the cases of the claimants; but if the defendants win the case, they get nothing in return.

This bill ought to be called an answer to the ambulance-chasing lawyer's prayer. It has a provision that every time a charge is preferred by any person who has been allegedly denied employment, or been denied promotion, or been fired because of his race, his color, his national origin, his creed, or his sex, this Commission can grant as much as $1,000 out of the taxpayers' pockets to finance his litigation. The taxpayers, already overburdened, do not desire such treatment from their own Government.

I repeat again there is no human mind gifted with a better answer to the ambulance-chasing lawyer's prayer. That is exactly what this bill would be. It is honeycombed with injustices from one end to the other. It has a provision that if an individual is involved in one of these proceedings, no matter whether he is willing to abide by the decision or not, he has to go into court and contest the matter, or the Commission can go into court if the accused does not respond for 60 days, and the court is disabled—disabled, mind you—from doing anything except ratifying in full what the Commission decided, no matter how unconstitutional it is and no matter how unjust it is. That is, indeed, an act of tyranny.

That is the kind of bill we have here. We have the usual provision which is put in bills by those who do not believe in jury trials in this land any more, that the findings of fact of the Commission shall be binding on the courts if there is any substantial evidence to support them, which means that if 5 percent of the evidence tends to support one side of a case and 95 percent the other side of the case, and the Commission accepts the 5 percent, the courts are powerless to do justice in that case. They are bound by the findings of the Commission.

The tragedy about these things is—and I say this with reluctance, but with what I believe to be truth—that people who are appointed to commissions of this kind are crusaders of the highest degree; if they were summoned upon a petit jury in any court in this land, they could be stood aside for bias as being unfit to serve as jurors. Yet this is the kind of men picked to compose these commissions. This is prostitution of judicial process. There is a pretense that judicial process is being observed, but everything in the bill is calculated to prevent justice being done, and to require that the case be decided on one side to the exclusion of the other.

I have been and shall always be against a bill of this type. I do not think that the States even have knowledge of the pendency of this bill, because the report shows that virtually all the witnesses who testified before the committee were crusaders on the Federal level, who were seeking, in most cases, an aggrandizement of Federal power.

This is a bill that would permit great tyranny. It is inconsistent with the federal system of government. It is inconsistent with the right of local self-government. It is inconsistent with the right of people to maintain their own educational institutions.

Furthermore, it constitutes an assault, in substance, upon the free enterprise system, because it brings within the coverage of the bill every little businessman from the Atlantic Ocean out to Hawaii and from Canada down to the Gulf of Mexico who employs as many as eight persons. It provides for giving those who seek to prosecute him a thousand dollars, but it gives him no help. It gives him nothing if he wins his case.

I respectfully submit that this is a bill which the Senate of the United States ought not to approve. I shall try to remove some of its inequities tomorrow.

I do not think that under a bill like this, a commission should be permitted to give $1,000 of the taxpayers' money to anyone who will present a claim; it goes further than that. It says the Commission can perform these services for him. In other words, the Commission can act as his lawyer and prepare his testimony if the Commission wishes to, instead of giving him the $1,000.

I think if we are going to have a bill like this, we ought to have a general counsel who will say which complaints are justified, and permit him to prosecute the claims, instead of allowing private ambulance-chasing lawyers to do so.

If time permitted, I could point out other inequities in this bill, but I have suggested a few of them. Instead, I shall summarize, for the Senate, the inequities and shortcomings of the bill.

SUMMARY OF SHORTCOMINGS OF S. 2453

Mr. President, by way of summary, let me briefly list several shortcomings of S. 2453.

First. S. 2453 as reported initially makes no provision for separation of functions. Under the increase in power given the Equal Employment Opportunity Commission, the Commission will be judge, jury, and prosecutor of actions brought before it.

Second. Under the bill's provisions, the

rules of evidence applicable to Federal district courts will be followed at the Commission's hearings only "so far as practicable." This language provides a powerful loophole to completely disregard due process of law.

Third. The often harassing Commissioner's charge will be broadened to allow any "officer or employee" of the Commission to file a charge "upon the request of any person claiming to be aggrieved." Potential for abuse of this power is clear and dangerous, as an employer, for one, may never know the identity of his accuser. Second, the provision would permit an attack on an employer's entire employment structure by an already biased Commission investigator, regardless of the limited nature of one employee's complaint filed with the EEOC.

Fourth. It is unclear whether the formal complaint issued by the EEOC after the failure of conciliation will be limited to the charge already filed with the Commission.

Fifth. Although there are provisions for the financial assistance of charging parties for prosecution of their charges, there is no like provision for the financial assistance for the defense of the small employer. If an employer should be found blameless, there is no provision for the reimbursement of his legal costs. Inasmuch as the EEOC permits labor unions to file charges as aggrieved parties, potential for coercion of small employers is great.

Sixth. The bill is inadequate in other regards. Employers may still find themselves defending identical charges before a multitude of local, State, and Federal agencies simultaneously. At present, employees who believe that they have been discriminated against may proceed through the EEOC, through State and local fair-employment-practice commissions, and through the NLRB, among others. Federal courts have also provided employees with recourse under the Civil Rights Act of 1866 as well. Employers may further find themselves harassed when visited by officers of the OFCC and other Federal compliance offices, regarding the same problem.

Seventh. EEOC becomes the NLRB of the civil rights area. The Commission would have the authority to issue cease-and-desist orders that would become self-enforcing within 60 days if unchallenged. EEOC will further be given the broad subpena power of the NLRB.

Eighth. Coverage of the Civil Rights Act will be expanded, to cover employers of eight or more employees, as well as employees of Federal, State, and local governments. The Commission is presently ineffective in dealing with the workload before it, as shown by its adoption of backlog procedures a few months ago. As noted by Senators DOMINICK, MURPHY, and SMITH of Illinois in the report accompanying S. 2453, by the addition of just five words, "'governments, governmental agencies, political subdivisions, 10 million additional persons will be covered out of a total workforce of about 80 million in this country." It is clear that the already immense workload of the Commission will be drastically increased.

EEOC'S OWN REPORT WARNS OF S. 2453

Mr. President, a copy of an internal memorandum prepared by the Equal Employment Opportunity Commission's Office of Legislative Affairs has come into my possession. This should astound the Members of the Senate. The office has some interesting things to say about the increased workload which will be generated by lowering the number of employees required for EEOC jurisdiction from 25 to eight. I read from the memorandum:

> This would mean an additional 9½ million employees and 667 thousand employers covered. In terms of the Commission's present jurisdiction, employees covered would be increased by approximately 20 percent and employers by 200 percent. Since the most accurate measure of the Commission's workload is respondent cases, it is evident that adoption of the proposal would considerably add to the Commission's already heavy workload in a way that would not contribute to the cumulative effect of decisions involving large employers. Efficiency in gaining the greatest results from relatively few cases would thus be curtailed.

This same EEOC report went on to warn of the workload increase that will result if jurisdiction is extended over State and municipal employees, and it gives us a good estimate of how many additional employees will be covered from this source. It says:

> This would provide coverage to approximately 9,358,000 full and part-time employees of 81,303 governmental units. In terms of EEOC's present coverage, it would mean expanding employees covered by approximately 20 percent, and employers by approximately 25 percent. Thus the workload increase would be substantial, a consideration that cannot be treated lightly.

Another provision which drew a warning from the EEOC's Office of Legislative Affairs is that which would give the Commission authority to demand access at any time to records required to be kept by title VII. The report says:

> This was the power originally assigned to the Attorney General in S. 2029 in connection with the pattern or practice suit, which latter is deleted from the Title by this Bill. The Commission's investigatory power would thus be considerably increased. However, careful consideration should be given to the provision that allows disclosure of information thus gained to the Congress or to a government agency. This provision could lead to demands for information from Congressmen interested in going on fishing expeditions in other members' districts, or desirous of kibitzing the Commission in its operations.

Mr. President, I appeal to the Senate to reject this bill, which, as I have stated, constitutes a drastic assault upon our federal system of government, which constitutes a denial of the rights of educational institutions to conduct their own affairs free from Federal interference, which interferes with the freedom of contract and the rights of all the small businessmen in the United States who employ as many as eight persons, and which constitutes a drastic prostitution of the judicial process.

This is a bill that has no place in a free society, because it makes the EEOC the most powerful institution of the Federal Government, because it gives them power over the hiring practices of virtually every businessman in the United States, who is already subject to harassment from hundreds of Federal bureaucrats. Our Nation's businessmen deserve better treatment.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. WILLIAMS of New Jersey. Before the Senate does have an opportunity to accept the bill before it, is it correct that the Senator from North Carolina has one amendment?

Mr. ERVIN. I have one amendment to create the Office of General Counsel for the EEOC, and then I have a series of amendments which I expect to ask the Senate to vote on en bloc.

Mr. WILLIAMS of New Jersey. An amendment has been added, offered by the distinguished Senator from Ohio, dealing with the Office of General Counsel.

Mr. ERVIN. I am not aware of the nature of that amendment.

Mr. WILLIAMS of New Jersey. It is in the bill at this point, and it does create the Office of General Counsel in the EEOC, much in analogy, to the National Labor Relations Board.

Mr. ERVIN. I thank the Senator from New Jersey for calling that to my attention, and I will see whether it covers the ground in as adequate a manner as my own amendment does.

Mr. WILLIAMS of New Jersey. The Senator from North Carolina has one other amendment, as I understand it.

Mr. ERVIN. There will be a series of amendments which I expect the Senate to vote on en bloc.

Mr. WILLIAMS of New Jersey. That means one vote, then.

Mr. ERVIN. Yes. Plus my possible amendment in the event that the amendment offered by the distinguished Senator from Ohio does not adequately do the job of providing for the position of general counsel. If it does not, I will offer that amendment.

Mr. WILLIAMS of New Jersey. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. COOK). The Senator will state it.

Mr. WILLIAMS of New Jersey. There is a time limitation, is there not, on the amendment that would be offered?

The PRESIDING OFFICER. The unanimous-consent agreement is that the amendments of the Senator from North Carolina shall be limited to 1 hour and 30 minutes, 1 hour to the Senator from North Carolina and 30 minutes to the manager of the bill.

Mr. ERVIN. I assure the Senator from New Jersey that that will be adequate time, because many of the things I intended to say in offering the amendments have been said by me in general opposition to the bill.

Mr. WILLIAMS of New Jersey. I thank the Senator.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock tomorrow morning.

The PRESIDING OFFICER. The Chair

calls the attention of the Senator from West Virginia to the fact that earlier today the majority leader asked unanimous consent, and it was granted, that the Senate come in at 12 o'clock noon tomorrow.

Mr. BYRD of West Virginia. I am aware of that.

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

ORDER FOR A BILL TO BE HELD AT THE DESK

Mr. JAVITS. Mr. President, having spoken with the office of the Senator from Nebraska (Mr. HRUSKA) and just having spoken with the Senator from Mississippi (Mr. EASTLAND), chairman of the Committee on the Judiciary, I ask unanimous consent that H.R. 18126, to amend title 28 of the United States Code to provide for holding district court for the eastern district of New York at Westbury, N.Y., which has been sent to us by the House, may be held at the desk, without being referred.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the unfinished business, Senate Joint Resolution 1, is laid aside temporarily on tomorrow, it remain in that status until the conclusion of morning business on Friday morning next.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and 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 legislative clerk proceeded to call the roll.

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

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

S. 4419—INTRODUCTION OF THE VOLUNTARY HEALTH BENEFITS ACT OF 1970

Mr. FANNIN. Mr. President, I introduce a bill and ask that it be appropriately referred.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred.

The bill (S. 4419) to provide for medical and hospital care through a system of voluntary health insurance, to establish a national program for protection against catastrophic illness, to provide for peer review of health services provided under Federal programs, and for other purposes, introduced by Mr. FANNIN, was received, read twice by its title, and referred to the Committee on Finance.

Mr. FANNIN. Mr. President, Americans spend in excess of $60 billion a year on health care.

With today's inflation, many of our citizens are hard-pressed to find the money to pay medical bills or health insurance premiums.

Government deficit spending caused the overall inflation; poorly conceived and poorly executed Government programs in the past decade accelerated the inflation in medical costs.

Because of today's high medical costs, it is practically impossible to have peace of mind unless your family is adequately protected by health insurance. And yet, the cost of adequate insurance is such that those who need it most can afford it least.

That is why I introduced S. 2705 last year.

My bill is designed to overcome the abuses apparent in the medicaid program and to make private health insurance available to all Americans who want it.

S. 2705 would make it possible for every individual and family in the United States to purchase an adequate, approved health protection plan from a private insurer.

There are many excellent private enterprise medical and hospital insurance services available.

Federal assistance would be on a sliding scale and would be in the form of tax credits for persons with taxable income.

I am continuing to push for passage of S. 2705, and today I am offering an expanded version of the bill.

One of the provisions would provide national catastrophic illness protection.

Under this proposal, the Federal Government would act in cooperation with State insurance authorities and the private insurance industry.

State and Federal Governments together would reinsure and otherwise encourage issuance of private health insurance to make adequate health protection available to all Americans at a reasonable cost.

This program would call for State plans which would be administered by State authority. Extended health insurance would be made more readily available, especially to those who would otherwise be unable to secure adequate and complete protection at rates they could afford.

Plans could vary from State to State.

Premium rates would be set by the Secretary of Health, Education, and Welfare.

Deductibles would be based on personal income.

No deductible would be imposed for the first $1,000 of adjusted, or taxable, income. There would be a deductible of 50 percent of a year's adjusted income for an individual or family falling between $1,000 and $2,000, plus the total of such adjusted income in excess of $2,000.

If a State could not carry out an insurance program, the Federal Government could provide the service. In such case, the Government would utilize insurance companies to the maximum possible extent.

As part of the Federal program there would be a national catastrophic illness insurance fund. It would make payments required under reinsurance contracts, premium equalization payments, and administration expense payments.

It would be credited with reinsurance premiums, fees, and other charges, interest on investments, advances from appropriations and other receipts.

The second provision I am introducing to my universal health protection bill is aimed at keeping medical costs down and the quality of service up.

It would create a system for physicians to police their own ranks.

The Secretary of Health, Education, and Welfare would enter into agreements with State medical societies for establishment of peer review organizations.

Each State would have a five-member commission established by the medical society. There also would be a nine-member advisory council.

The commission would divide the State administrative areas with three-member local review panels and five-member local advisory panels for each area.

Members of the commission and panels would be doctors of medicine or osteopathy. The advisory council would have representatives of consumers, health care providers, and insurance carriers.

Each panel would consider and review information supplied by individuals, institutions, hospitals, Government agencies and carriers.

In addition, the panel could make investigations by random selection.

The panel could hold hearings on utilization, charges and quality of services provided to a patient or patients. The panel could recommend disciplinary action to be taken when a provider of medical service is found to have been in error.

The commission would then consider the recommendation and accept, reject, or modify it. If disciplinary action is warranted, the recommendation would be forwarded to the Secretary.

It would be up to the Secretary to impose, reduce, or reject the penalty.

Of course, the right of judicial review would be provided.

Mr. President, both of these provisions expand S. 2705, which I sponsored.

Today I also am introducing another health care amendment, this one to the social security bill.

It was reported recently that President Nixon is seeking the development of new approaches to make Americans the most healthy people on earth.

With the costs of medicine today, it is obvious that we need to encourage the development of new ideas in providing better health care at lower cost.

Two doctors in Phoenix have met this problem head on.

Dr. John L Ford and Dr. Wallace A. Reed became concerned about the fact that once inexpensive minor surgery is now costing patients hundreds of dollars.

They set out on their own—without Government subsidy—to cut the cost of minor operations.

The two doctors developed the concept of a privately run ambulatory surgical facility.

In Phoenix, it is known as Surgicenter.

The facility is equipped to handle 1-

day surgical cases in which a person may go home safely after an operation without overnight hospitalization.

Surgicenter is intended to offer quality medical care at the lowest possible cost.

Surgicenter escapes many costs of a regular hospital because it can eliminate services and facilities required in a 24-hour operation. It has no cafeteria, no overnight facilities. It does not require round-the-clock X-ray or laboratory services, and it can make maximum use of disposable equipment to save laundry costs.

In the past, most insurance companies required their clients to be hospitalized if they were to be covered for surgical expenses.

Private insurance companies are now changing their thinking on this matter. They are finding the requirement for hospitalization can cause unnecessary expense. In addition, it takes up hospital beds which may be needed for more serious cases.

Thus, some private insurance carriers have provided coverage for subscribers who choose to have their operations in Surgicenter.

If the private insurance industry sees this as a good way to render service and save money, I see no reason why the Federal Government should not follow the example.

The bill I am offering today would provide that medicare coverage be extended to approved ambulatory surgical centers for specified purposes.

The legislation would require that the quality of medical care at such centers be of the same high caliber as that offered at hospitals.

Surgery must be performed by a physician who is authorized to perform such procedure in an area hospital.

Anesthesia must be administered by a licensed anesthesiologist.

The center must be equipped to perform diagnostic X-ray and laboratory examinations in connection with the surgery.

Professional registered nurses must be on the job.

Emergency equipment must be available to handle any foreseeable complications.

The Phoenix Surgicenter, located near Good Samaritan Hospital, has now been in operation almost 8 months.

The founders report there has been greater utilization by medicare patients than had been anticipated.

They do not see why medicare patients should be penalized for using the money-saving service.

I urge my fellow Senators who are concerned about cutting the skyrocketing medical costs to join me in supporting this program. It is a new approach that shows great promise.

One indication of this is the brisk business the Surgicenter did in its first weeks of operation.

Surgicenter opened February 12. By March 23, the facility had carried out 196 procedures.

Drs. Reed and Ford reported:

On no occasion was there a need for a direct admission from Surgicenter to a hospital. There were 12 Medicare patients, the oldest being 88. The youngest patient was a 4-month old child who required a probing of the tear ducts. One hundred thirty-one of the procedures were done under general anesthesia; sixty-four were under local; and in one instance (where a child had eaten breakfast), a regional block was performed.

As nearly as we can ascertain, the reception on the part of patients as well as their attending surgeons has been excellent.

The facility has continued to be a success.

This is strong evidence that Surgicenter is a promising development in medicine and a concept we should take advantage of.

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, upon the disposition of the reading of the Journal on tomorrow and upon the disposition of any unobjected-to items on the legislative calendar, there be a period for the transaction of routine morning business with statements limited therein to 3 minutes.

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

ORDER FOR THE PENDING BUSINESS TO BE LAID BEFORE THE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the morning business on tomorrow, the unfinished business, Senate Joint Resolution 1, be laid before the Senate.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the understanding with reference to the time on the amendments to pending business, S. 2453, to be offered by the able senior Senator from North Carolina (Mr. ERVIN)?

The PRESIDING OFFICER. There will be 1 hour allotted to the Senator from North Carolina (Mr. ERVIN) and one-half hour to the Senator from New Jersey (Mr. WILLIAMS).

Mr. BYRD of West Virginia. Is that the agreement on each of the Senator's amendments?

The PRESIDING OFFICER. The Senator is correct.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on all other amendments the debate on each amendment be limited to 1 hour, the time to be equally divided and controlled between the mover of the amendment and the manager of the bill.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time on the bill be limited to 1 hour, the time to be equally divided and controlled between the manager of the bill, the Senator from New Jersey (Mr. WILLIAMS), and the minority leader or his designee.

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

The unanimous consent agreement was later reduced to writing as follows:

Ordered, That during the further consideration of the bill (S. 2453) to promote equal employment opportunities for American workers, (except amendments by the Senator from North Carolina, Mr. ERVIN on which there will be 1½ hours each to be divided and controlled—1 hour to Mr. ERVIN and ½ hour to Mr. WILLIAMS of New Jersey) debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the manager of the bill (Mr. WILLIAMS of New Jersey).

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the manager of the bill (Mr. WILLIAMS) and minority leader or his designee: *Provided*, That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion, or appeal.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 14 minutes p.m.) the Senate adjourned until tomorrow, Thursday, October 1, 1970, at 11 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 30, 1970:

DEPARTMENT OF LABOR

Malcolm R. Lovell, Jr., of Michigan, to be an Assistant Secretary of Labor.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Wilmot R. Hastings, of Massachusetts, to be General Counsel of the Department of Health, Education, and Welfare.