LER of California, Mr. MINSHALL, Mr. Moss, Mr. PIKE, Mr. ROONEY of Pennsylvania, Mr. WALDIE, and Mr. CHARLES H. WILSON):

H. Res. 1243. Resolution on dismissal of professional air traffic controllers by the Federal Aviation Administration; to the Committee on Interstate and Foreign Commerce.

By Mr. JACOBS:

H. Res. 1244. Resolution relative to reducing the Federal administrative budget; to the Committee on Appropriations.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ADDABBO:

H.R. 19644. A bill for the relief of Giacomo and Salvatrice DiGrigoli and minor son Angelo; to the Committee on the Judiciary.

By Mr. BURTON of California:

H.R. 19645. A bill for the relief of Rosalina A. Prudencio; to the Committee on the Judiciary.

By Mr. CELLER:

H.R. 19646. A bill for the relief of Vincent D. O'Connor; to the Committee on the Judiciary.

By Mr. PODELL:

H.R. 19647. A bill for the relief of Mrs. Amanda De Los Dolores Castillo Malespin; to the Committee on the Judiciary.

By Mr. SATTERFIELD:

H.R. 19648. A bill for the relief of H. Dixon Smith; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

443. The SPEAKER presented a memorial of the Legislature of the State of California relative to attempting to obtain the release or better treatment of prisoners held by North Vietnam, which was referred to the Committee on Foreign Affairs.

PETITIONS, ETC.

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

611. By the SPEAKER: Petition of the Congress of Micronesia, Saipan, Mariana Islands, Trust Territory of the Pacific Islands, inviting the U.S. Government to continue discussions with representatives of the Congress of Micronesia on the future political status of Micronesia; to the Committee on Interior and Insular Affairs.

612. Also, Petition of the Congress of Micronesia, Saipan, Mariana Islands, Trust Territory of the Pacific Islands, informing the United Nations of the present status of discussions between representatives of the Congress of Micronesia and representatives of the U.S. Government on the future political status of Micronesia; to the Committee on Interior and Insular Affairs.

613. Also, Petition of the Congress of Micronesia, Saipan, Mariana Islands, Trust Territory of the Pacific Islands, requesting that the United States and the United Nations take no action on any matters relating to the future political status of Micronesia without first obtaining the consent and approval of the Congress of Micronesia; to the Committee on Interior and Insular Affairs.

614. Also, Petition of the Congress of Micronesia, Saipan, Mariana Islands, Trust Territory of the Pacific Islands, expressing the sense of the Congress of Micronesia that the restoration and rehabilitation costs of Bikini Atoll should be borne jointly by the U.S. Department of Defense and the Atomic Energy Commission; to the Committee on Interior and Insular Affairs.

615. Also, Petition of the Senate of the Congress of Micronesia, Saipan, Mariana Islands, Trust Territory of the Pacific Islands, relative to passage of S. 3176, providing funds for the development of new seining methods for Pacific island tuna fisheries; to the Committee on Merchant Marine and Fisheries.

616. Also, Petition of the Congress of Micronesia, Saipan, Mariana Islands, Trust Territory of the Pacific Islands, urging the United States to remove the tariff on importation into the United States of marine products processed in the Trust Territory; to the Committee on Ways and Means.

SENATE—*Wednesday, October 7, 1970*

The Senate met at 10 a.m., and was called to order by Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina.

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

Almighty God, we bless and praise Thee that we have come to the light of another day. As we undertake our work help us to take pleasure in it. Show us clearly what our duty is and help us to be faithful in doing it. Grant us wisdom for the big and the difficult problems. Light up the small and irksome duties of the day. Help us to believe that glory may dwell in common tasks. Let all we do be well done, fit for Thine eyes to see. And if we cannot love our work, let us think of it as Thy task, and by our love of Thee, make unlovely things to shine with the beauty of Thy presence.

Bless all the peacemakers of the world that mankind may come at last to Thy kingdom of justice and truth.

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., October 7, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. HOLLINGS 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, October 6, 1970, be dispensed with.

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

ORDER OF BUSINESS

Mr. JAVITS obtained the floor.

Mr. MANSFIELD. Mr. President, if the distinguished Senator from New York (Mr. JAVITS) will allow the leadership a few minutes at this time, without infringing on the time he is to speak, we would very much appreciate it.

Mr. JAVITS. I am happy to yield to the Senator from Montana for that purpose.

COMMITTEE MEETINGS DURING SENATE SESSION

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

Subcommittee on Intergovernmental Relations of the Committee on Government Operations.

Subcommittee on Internal Security of the Committee on the Judiciary.

Committee on Foreign Relations.

Subcommittee on Employment, Manpower, and Poverty of the Committee on Labor and Public Welfare.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of measures on the Calendar to which there is no objection, beginning with Calendar No. 1275.

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

PUBLIC LAND OUTDOOR RECREATION ACT OF 1970

The bill (S. 3389) to provide for the protection, development, and enhancement of the public recreation values of the public lands was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

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

SEC. 2. (a) The Congress recognizes that the public lands administered by the Secretary of the Interior (hereinafter referred to as the Secretary), through the Bureau of Land Management are vital national assets that contain a wide variety of natural resource values, including outdoor recreation values, and that these resources should be developed and administered for multiple use and sustained yield of the several products and services obtainable therefrom for the maximum benefit of the general public. The public outdoor recreation values of these lands are demonstrated by the large number of our citizens using them for many

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types of outdoor recreation, such as hunting, fishing, trapping, camping, hiking, picnicking, sightseeing, photography, rock and mineral collecting, off-road vehicle driving, horseback riding, and other recreational purposes.

(b) Congress finds that these values are threatened by lack of protection and development. It is the purpose of this Act to provide a basis for the protection, development, and enhancement of the outdoor recreation values of the public lands, within the basic framework of multiple-use management, consistent with the Act of May 28, 1963 (77 Stat. 49; 16 U.S.C. 4601—4601–3) and in conformity with the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 901; 16 U.S.C. 4601–4, 4601–11).

SEC. 3. As used in this Act, (a) "public lands" means all lands administered by the Secretary through the Bureau of Land Management.

(b) "Multiple use" means the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; the most judicious use of land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustment in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(c) "Sustained yield of the several products and services" means the achievement and maintenance of a high-level annual or regular periodic output of the various renewable resources of land without impairment of the productivity of the land.

SEC. 4. (a) The Secretary is hereby authorized to acquire by purchase, exchange, or otherwise such lands or interests therein as he deems necessary to provide access by the general public to public lands administered by him for outdoor recreation purposes pursuant to this Act.

(b) Funds for this purpose shall be allocated in accordance with the provisions of section 6 of the Act of September 3, 1964 (78 Stat. 903), as amended (16 U.S.C. 4601–9).

(c) Notwithstanding any other provision of law, in exercising the exchange authority granted by subsection (a) of this section, the Secretary may accept title to any non-Federal property or interests therein and in exchange therefor he may convey to the grantor of such property or interest any public lands or interests therein under his jurisdiction and which he classifies as suitable for exchange or other disposal and which is located in the same State as the non-Federal property to be acquired. The values of the lands so exchanged either shall be approximately equal, or if they are not approximately equal, the value shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require. The proceeds received from any conveyance under this section shall be credited to the Land and Water Conservation Fund in the Treasury of the United States.

SEC. 5. Violations of the public land laws and regulations of the Secretary relating to protection of the public lands and the uses thereof shall be punishable by a fine of not more than $500 or imprisonment for not more than six months, or both. Any person charged with the violation of such laws and regulations may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401 of title 18, United States Code (Supp. IV 1968).

SEC. 6. The Secretary may authorize such persons who are employed in the Bureau of Land Management as he may designate to make arrests for the violation of the laws and regulations referred to in section 5 of this Act. Upon sworn information by any competent person, any United States commissioner or magistrate in the proper jurisdiction shall issue warrant for the arrest of any person charged with the violation of said laws and regulations, but nothing herein shall be construed as preventing the arrest by any officer of the United States, without warrant, of any person taken in the act of violating said laws and regulations.

SEC. 7. The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act.

SEC. 8. The purposes of this Act are declared to be supplemental to the purposes for which any of the public lands have been designated, acquired, withdrawn, reserved, held, or administered, and consistent with the Taylor Grazing Act of June 28, 1934, as amended and supplemented (48 Stat. 1269; 43 U.S.C. 315–315r), the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986), as amended (43 U.S.C. 1411–18), and the Act of August 28, 1937, as amended (50 Stat. 874; 43 U.S.C. 1181a–f).

SEC. 9. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this Act. Any funds so appropriated shall remain available until expended.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1256), explaining the purposes of the measure.

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

PURPOSE

This bill applies to the public lands under the administration of the Bureau of Land Management of the Department of the Interior. It contains a congressional recognition that the land constitutes a vital national asset, and a statement that it is the purpose of the act to provide, within the basic framework of the multiple-use concept, for its protection and development.

The bill would grant the Secretary of the Interior authority to acquire, by purchase, exchange, or otherwise such land and interest therein as he deems necessary to provide public access to public land. Acquisition funding is directed to be in accordance with the Land and Water Conservation Fund Act. The Secretary is also authorized to exchange land, subject to the land being located in the same State, and an equalization of values requirement.

Sanctions are provided for violations of the public land laws and regulations of the Secretary, who would be authorized to designate BLM personnel to make arrests for such violations. This places violations of Department regulations relating to the public land on the same basis as violations of regulations applicable to land administered by the Forest Service and the National Park Service.

BACKGROUND

The Bureau of Land Management has responsibility for 452 million acres of federally owned lands. Recent figures reveal that more than 30 million recreation visits a year are made to these public lands with a projected increase to 50 million visits by 1974. The lands range from the Arctic Ocean's edge to the border with Mexico, and contain about every imaginable type of climate, terrain and water. They are now being discovered for their full recreational potential, resulting in this explosive growth in use. The demand on these public lands will continue to grow as the Nation's population, affluence and mobility increase while the land base remains static.

Years of neglect have created many problems on the public lands administered by the Bureau of Land Management. Lack of regulations and enforcement authority have resulted in wanton vandalism and destruction of resources. Lack of sanitation facilities has created health hazards. Littering, overuse, and neglect have created unsightly blights on the landscape. Lack of public access has locked up millions of acres of public land for the private use of but a few, and many outstanding hunting, fishing, and other recreation opportunities are not available. As a result of the lack of enforcement authority and interpretive and restoration work, irreplaceable archeological values have been lost.

The committee feels that the great outdoor recreation potential of these forgotten lands should be made available for all American citizens, and that the natural, cultural, and historic qualities of the public lands must be protected and developed. It believes that regulations should be promulgated to encourage exploration and provide protection for archeological and other scientific discoveries, and for the control of billboards and other intrusions on the esthetic values of the lands. The committee believes that this great land resource needs a plan for development, a program for use, and a system of protection made operative within the multiple-use framework.

In its endorsement of S. 3389, the Department of the Interior says as follows: "The Department has taken a large variety of steps to upgrade the management of public outdoor recreation on the public land. It has realized that recreational use of public land has reached crisis proportions so far as integrity of natural resources and protection of other uses are concerned . . . The problems to which this bill is addressed are immediate and pressing. The Department is going forward with requests for appropriations to meet urgent needs. The authority which would be provided by the bill is needed to secure the fullest possible value out of the projected expenditures."

PUBLIC LAND LAW REVIEW COMMISSION RECOMMENDATIONS

This proposed legislation embodies some of the recommendations of the Public Land Law Review Commission in the report, "One Third of the Nation's Land" submitted in June of this year to the President and the Congress.

The report took cognizance of environmental needs in its recommendation 16: "Environmental quality should be recognized by law as an important objective of public land management, and public land policy should be designated to enhance and maintain a high quality environment both on and off the public lands."

In its recommendation 85, it said, "Congress should provide guidelines for developing and managing the public land resources for outdoor recreation."

It also said, in recommendation 86, that "Congress should authorize a program for acquiring and developing reasonable rights-of-way across private lands to provide a more extensive system of access for outdoor recreation and other uses of the public land."

In the summary of its chapter (4) on "Public Land Policy and the Environment," page 88, the Commission said:

"The sum total of the recommendations in this chapter is to make the public lands of the United States examples for the rest of the country in how to manage and use lands and resources with due regard for the environment. It is essential that this be done if we are to hope that citizens will engage in the practices that Government urges."

COMMITTEE RECOMMENDATION

The Senate Committee on Interior and Insular Affairs recommends early and favorable action on S. 3389.

INCREASE IN PER DIEM ALLOWANCE AUTHORIZED FOR MEMBERS OF THE AMERICAN BATTLE MONUMENTS COMMISSION

The Senate proceeded to consider the bill (H.R. 18731) to increase from $20 to $40 per day the per diem allowance authorized in lieu of subsistence for members of the American Battle Monuments Commission when in a travel status which had been reported from the Committee on Interior and Insular Affairs with an amendment on page 1, line 9, after the word "amended", strike out "by deleting therefrom '$20' and inserting in lieu thereof '$40'.", and insert to read as follows:

The members of the Commission shall serve as such without compensation, except that (1) their actual expenses in connection with the work of the Commission, (2) when in a travel status outside the continental United States, a per diem of $40 in lieu of subsistence, and (3) when in a travel status within the continental United States, a per diem at the same rate authorized to be paid under section 5703(c) (1) of title 5, United States Code, may be paid to them from any funds appropriated for the purposes of this Act, or acquired by other means hereinafter authorized.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended so as to read: "An act to revise the per diem allowance authorized for members of the American Battle Monuments Commission when in a travel status."

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1257), explaining the purposes of the measure.

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

PURPOSE OF BILL

The purpose of H.R. 18731, as amended, is to place the members of the American Battle Monuments Commission on a basis of equality with other Government officials in similar status with respect to allowances for travel inside the continental United States, and to increase their allowances for foreign travel.

That is, the Commission members will be entitled to receive per diem in lieu of subsistence of $25 when in travel status in this country in connection with work of the Commission. For official travel overseas the per diem allowance for the Commission members will be $40 instead of the present $20 established in 1956 by an amendment to the basic Battle Monuments Commission Act (70 Stat. 640; found in 36 U.S.C. 121).

Members of the Commission are appointed by the President and serve without compensation.

THE COMMITTEE AMENDMENT

Under the bill as passed by the House, travel allowances for both foreign and domestic travel would be $40 per diem. The committee amendment limits the $40 rate to travel outside the continental United States, and provides the same rate for domestic travel as that established by section 5703(c) (1) of title 5, United States Code, for individuals serving without pay or at $1 a year. This amount is $25 a day.

The committee also changed the title of the bill to read: "An Act to revise the per diem allowance authorized for members of the American Battle Monuments Commission when in a travel status."

BACKGROUND

The American Battle Monuments Commission was established after World War I by the 67th Congress in 1923 to "prepare plans and estimates for the erection of suitable memorials to mark and commemorate the services of the American forces in Europe and erect memorials therein at such places as the Commission shall determine * * *" (42 Stat. 1509).

In 1946, the authority and field of operations of the Commission were extended to "such places outside the United States where the American Armed Forces have served since April 6, 1917, or shall thereafter serve as determined by the Commission." (60 Stat. 317). Also the Commission membership was increased from seven to 11, its present number.

The Commission advises that it has received $13,501 for per diem during the past 5 years at the overall $20 rate, an average expenditure annually of approximately $2,700. Therefore, the cost of H.R. 18731 would be small.

COMMITTEE RECOMMENDATION

In view of the very considerable increase in the costs of travel in the 14 years since the $20 rate was established, and the fact that the members serve without pay, the committee is convinced that the proposed increases in the per diem allowance are warranted, and recommend favorable action on the bill as amended.

ANDERSONVILLE NATIONAL HISTORIC SITE, GA.

The bill (H.R. 140) to authorize the establishment of the Andersonville National Historic Site in the State of Georgia and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1258), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 140 is to establish the Andersonville National Historic Site.

BACKGROUND

A little more than a century ago, this Nation was embroiled in an internal conflict by far more serious than any encountered before or since. During that period in our history sadness, and sacrifice, and suffering were not uncommon. Americans were facing each other on the battlefield. Many were lost in the bitter struggles, but thousands were taken captive.

The story of captivity is often as grim as the story of war itself. Men, isolated from their comrades, and lonely for their loved ones, must be strong in mind and spirit to endure such circumstances. Andersonville can tell that story—the story of brave Americans who, confronted with adversity almost beyond imagination, retained their devotion to their country.

During the War Between the States, some 56,000 prisoners died in confinement. Disease and malnutrition stalked the crowded prison camps. Prison camps have never been pleasant places, but Andersonville represents the grim characteristics of those of its time. Here, at a stockade built to accommodate about 10,000 men, some 50,000 Union prisoners were eventually incarcerated. During the 13 months of its existence, 11,000 of these men died.

Today, memorials mark the loss of men from Connecticut, Illinois, Indiana, Iowa, Maine, Minnesota, New Jersey, New York, and Pennsylvania. Undoubtedly, many others came from other States of the Union and the national cemetery which now exists there also serves patriots of other struggles in more recent times.

At other places, the Congress has recognized the significance of events which once occurred. Sometimes the stories that they tell are not pleasant, but they are an integral part of the historic panorama of this Nation. Many national battlefields and historic sites depict tragic moments in our history. They are recognized not to bolster the American ego, but to remind us that the way of life which we enjoy today was brought about by the often painful sacrifices of those who preceded us.

Of Gettysburg, Abraham Lincoln said, neither he, nor any other person, could dedicate, or consecrate, or hallow the ground of the battlefield, because those brave men, living and dead, who struggled there "consecrated it far above our poor power to add or detract." Andersonville is such a place and Congress should set it aside as a memorial not only to those who struggled there in those times, but to all Americans who have served their country, at home and abroad, and suffered the loneliness and anguish of captivity. It is the undaunted spirit of men such as these that keeps America the Nation that it is. Andersonville is the last period prison camp in the country where this story can be told.

ACQUISITION, DEVELOPMENT, AND INTERPRETATION OF THE SITE

At the present time, much of the proposed historic site is already federally owned. A small prison park and the Andersonville National Cemetery, presently administered by the Department of the Army, will be transferred to the National Park Service if H.R. 140 is enacted. Together with this 201 acres of land, it is contemplated that the corridor of private property which separates the two detached units will be acquired and returned to a natural setting and that a scenic buffer bordering the area will be acquired to produce a single harmonious unit. Altogether, 294 acres of privately owned lands are to be acquired at an estimated cost of $362,000.

The existing prison park contains the corners, gates, and outline of the stockade. To this, the National Park Service expects to add displays and signs to aid in the interpretation of the life of a prisoner-of-war and the role of prison camps in history. To accomplish its mission, a central visitor entrance to the historic site will be constructed and a separate entrance for burial ceremonies at the cemetery will be built. In addition, the development plan contemplates an interpretive center, walking trails, a small picnic area and certain road revisions. The estimated cost of these developments was $1,605,000 as of March 1969.

COST

In accordance with these facts, H.R. 140 authorizes the appropriation of $362,000 for the acquisition of lands and interests in lands and $1,605,000 for development of the area.

COMMEMORATE THE OPENING OF THE CHEROKEE STRIP TO HOMESTEADING

The bill (H.R. 15012) to authorize a study of the feasibility and desirability of establishing a unit of the national

park system to commemorate the opening of the Cherokee Strip to homesteading, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1259), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of H.R. 15012 is to authorize and direct the Secretary of the Interior to cause a study to be made of the feasibility and desirability of establishing a unit of the national park system commemorating the opening of the Cherokee Strip to homesteading, the recognition of the historic trails of the old Southwest, and the restoration of some of the outstanding examples of the natural prairie scene.

NEED

While the Secretary of the Interior has general authority to conduct feasibility studies for additional units of the national park system, legislation such as H.R. 15012 gives him guidance as to the areas in which the Congress has an interest and which it wishes to emphasize. Through legislation such as this, the Congress can activate the necessary preliminary procedures which must be completed before authorizing legislation can be considered. This is the most meaningful method available to the Congress to participate in the initiation of park proposals.

The study contemplated by the bill will involve the historic events which have marked the area known as the Cherokee Strip. Located along the southwestern border of Kansas and the northwestern border of Oklahoma, this corridor is rich in western history. Once it was an Indian passage to the buffalo hunting grounds on the western plains. Later, it became the outlet for cattle drives to the railroads as they moved westward. Then, in the late 1800's, it was the scene of the largest—and the most dramatic—homesteaders' land rush in the country's history. All aspects of this historic panorama, and the natural setting of the prairie scene, should be included in the overall study which the bill authorizes.

The National Trails System Act of 1968 (Public Law 90–543) authorized the study of the old cattle trails of the Southwest. The study which H.R. 15012 authorizes is expected to be fully coordinated with the studies undertaken pursuant to that act. No conflict is anticipated since the studies to be made under the Trails Act are directed toward the location of long, continuous trails, while this aspect of the study under consideration would concentrate primarily on the historical significance of these trails in relation to other events which took place within the area described. While it may not be feasible to identify and mark the entire length of some of these trails, it may very well be that segments of these trails could play a significant role in an overall interpretive program. Naturally, since the bill has as its ultimate objective the possible future authorization of a unit of the national park system, it would seem to be most appropriate for the Secretary to conduct the comprehensive program through the National Park Service with the advice and assistance of any other appropriate agencies.

COST

The bill authorizes appropriations of up to $30,000 for the purpose of conducting this study, which is the amount of money which administrative spokesmen said would be needed for this purpose.

PRESERVE AND PROMOTE THE RESOURCES OF THE CONNECTICUT RIVER VALLEY

The Senate proceeded to consider the bill (S. 4090) to preserve and promote the resources of the Connecticut River Valley, and for other purposes, which had been reported from the Committee on Interior and Insular Affairs with amendments on page 1, line 9, after the word "numbered", insert "NSR–CON–91,000,"; in the same line, after the word "dated", insert "August 1970,"; on page 2, line 21, after the word map", strike out "referred to in section 1 of this Act.", and insert "numbered NR–CON–40,000, and dated July"; on page 3, line 15, after the word "easements", strike out "are" and insert "or"; on page 9, line 10, after the word "the", where it appears the second time, strike out "national recreation area" and insert "riverway"; in line 12 after the word "reservoir", strike out "powerhouse,"; on page 10, line 17, after the word "of", strike out "each" and insert "the"; in line 19, after the word "in", strike out "each" and insert "the"; on page 11, line 10, after "(f)", strike out "Each" and insert "The"; on page 14, at th beginning of line 5, insert "not to exceed"; and after the amendment just above stated, strike out "$36,000,000" and insert "$23,000,000".

The ACTING PRESIDENT pro tempore. Without objection, the committee amendments are agreed to en bloc.

Mr. MANSFIELD. Mr. President, at the desk there is a technical amendment which I would hope the Senate would approve.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The amendment was read, as follows:

On page 2, line 22, insert "1970" following the word July.

The amendment was agreed to.

Mr. BIBLE. Mr. President, the Committee on Interior and Insular Affairs has approved S. 4090, with amendments, to authorize the establishment of a Connecticut Historic Riverway.

The riverway would be composed of 23,500 acres of land and water extending for 11 miles along the Connecticut River from Old Saybrook to East Haddam in the State of Connecticut. The bill authorizes the Federal Government to purchase, by eminent domain proceedings if necessary, up to 5,000 acres of land. The remaining portions of the riverway would remain in private ownership under a "conservation zone" arrangement. The total cost of land and development would be $23 million.

The Connecticut River flows for 400 miles through the very heart of New England. Fifty million Americans live within 250 miles of its banks. The proposed riverway area itself is within 90 miles of New York City and 120 miles of Boston. Yet, despite its proximity to major metropolitan areas, many parts of the river retain a scenic and historic charm.

The Committee on Interior and Insular Affairs has been deeply concerned with the need to provide open space, recreational, and park areas for the people of the Northeast sections of the United States. It is also aware of the growing need to protect the quality of the national environment by preserving those areas of especial beauty and tranquility which remain in the most crowded parts of our country.

The committee believes that authorization of the Connecticut Historic Riverway is another urgently needed step toward these goals.

Two years ago, the Secretary of the Interior, Stewart Udall, presented a comprehensive report recommending the establishment of a Connecticut national recreation area. Only a few weeks ago, Secretary Hickel reiterated his strong support for this proposal.

The Interior Department report, entitled New England Heritage, proposed three Federal enclaves along the Connecticut River to be complemented by other State and local conservation efforts. The Connecticut Historical Riverway encompasses the first of these Federal areas.

The area is one of quiet beauty and historical interest. The Connecticut River at this point is a major estuary flowing freely toward Long Island Sound. It is the only major river remaining on the Eastern Seaboard without an urban or industrial center at its mouth. The riverbank is alternately low-lying marshes and steep forest-covered slopes. Small islands are scattered here and there. Picturesque Yankee towns such as East Haddam, Chester, Deep River, and Essex are settled amidst the slopes and flatlands. The area remains one where commercial and industrial development has been slow.

The bill would permit Federal acquisition of land and waters up to 5,000 acres. Ninety-three percent of the land so acquired is completely undeveloped. The cost of land acquisition is estimated to be $18,200,000.

The remainder of the area—17,500 acres—would remain in private ownership under a "conservation zone" arrangement. In such a zone privately owned land would be exempt from Federal acquisition as long as prevailing zone regulations met standards developed by the Secretary of the Interior with the assistance of a local advisory committee. These standards, while not designed to inhibit normal growth patterns, would protect the area from developments which would detract from the natural or traditional riverway scene.

The committee expects development costs of the National Park Service within the Connecticut Historic Riverway to be limited. The nature of the countryside and environment will not sustain new road systems or massive development. Much of the Yankee heritage and scenic tranquility of the area would be lost. It is expected that group camping, hiking, boating, fishing, and cycling will be major activities. In addition, the Federal land acquisition will protect most of the valuable estuarine marsh areas along the riverbanks.

Mr. President, many sections of the Connecticut River are polluted. But, a comprehensive State and Federal program of abatement is now underway to clean the river in the near future. A Connecticut River free of pollution will attract a higher intensity of uncontrolled

commercial development. Already, the signs of such development are present.

As a result, much of what we seek to preserve will be threatened. The committee believes action is needed now to save the Connecticut River.

Mr. RIBICOFF. Mr. President, the Connecticut River flows 400 miles through the heart of New England to Long Island Sound. Its beauty, tranquilty and historic tradition are part of our Yankee heritage.

S. 4090, which the Senate is now considering, represents a major step toward preserving this river as one of the great resources of the Nation.

Situated in the center of historic New England, and in part surrounded by the great urban sprawl of industrial America, the Connecticut River provides an unmatched array of the vital natural resources which are fast disappearing in our modern society. The preservation and renewal of these assets is of both regional and national concern.

We in New England have been the fortunate beneficiaries of a river which has remained largely unspoiled even to the present day. By a quirk of fate, the sand bars along the Connecticut shore have limited the flow of commercial river traffic. As a result, the Connecticut stands alone as the single major American river without an industrial or urban center at its mouth. Thus, despite some pollution and normal commercial growth, much of the river valley retains its original unique charm.

Both as a swift, coldwater stream in Northern New England and as a broad, majestic estuary in Connecticut, flowing to Long Island Sound, the Connecticut River is a priceless natural asset for all Americans.

Yet, this resource is now threatened. Growing commercial and industrial pressures will soon deplete the beauty and tranquility of the valley. Allowed to continue uncontrolled, these developments will eventually destroy the valley's environment.

State and local programs are already underway to end pollution in the river. Within a few years, many sections of the Connecticut will again be suitable for swimming. With these improvements, however, will come new dangers to the valley. Commercial projects could join with increased industrial construction to change and destroy the character of the valley. Such harmful developments must be prevented.

Therefore, in 1966, with the support of the entire New England senatorial delegation, I introduced legislation to authorize a comprehensive study of the Connecticut River Valley in order to formulate the necessary steps to preserve this great river. Two years ago, the Department of the Interior issued its study report, New England Heritage, which gave us, for the first time, a regional format within which we could work to restore and preserve the beauty of the Connecticut River Valley.

New England Heritage recommended a three-unit Connecticut River national recreation area in Connecticut, Massachusetts, Vermont, and New Hampshire. In July of this year I introduced S. 4090, which would establish the largest of these units—a 23,500-acre Connecticut Historic Riverway in my own State of Connecticut—as the first step toward a comprehensive program to save the Connecticut River.

The riverway is designed to protect the environment of the lower Connecticut River Valley. It is not the purpose of this bill to call for massive changes, but rather to preserve the traditional riverway scene.

Toward this goal, the legislation authorizes a limited amount of Federal land acquisition in the riverway. The Connecticut Historic Riverway will encompass large parts of the river valley in the midst of a heavily populated and urbanized part of America. Wholesale Federal land acquisition would be unwarranted and unwise. Less than 10 percent of the 5,000 acres of land which will be acquired by the Federal Government is developed. The remainder of the riverway will be maintained in private ownership under zoning standards suitable for the protection of of the landscape.

Federal administration of the riverway will be directed by the National Park Service. Such administration, however, will be carefully circumscribed to protect the scenic and pastoral charm of the valley. It is not intended that developments in this area will require a new road system or large-scale construction of any nature.

The basic principle of this legislation is that the nature of the resource should dictate its best use and development. As New England Heritage points out, the lower Connecticut Valley cannot sustain intensive development. The small coves, the marshlands, the forested hills, and valley are locations of rare solitude and beauty. The Connecticut towns and countryside are of continuing historic interest. The protection and maintenance of the serene character of this part of the river is the best overall use of this resource.

The legislation which I have introduced and which has been reported favorably by the Committee on Interior and Insular Affairs would prohibit uses of the riverway which would be incompatible with its ecological nature or the traditions of its people.

Mr. President, no federally administered park area can hope to succeed without the cooperation of the people in the affected areas. In this regard, S. 4090 marks a milestone in the development of conservation legislation in the United States.

The bill is the end result of many months of effort and cooperation between Federal officials and the people of Connecticut.

Almost 2 years ago, an advisory committee was established in Connecticut to review the recommendations of New England Heritage, to preserve the Connecticut River. This advisory committee is composed of private citizens and State and local officials. These men and women have been concerned and constructive. Their assistance in drafting the present legislation has been invaluable.

Several weeks ago, the Advisory Committee reviewed the final draft of S. 4090 and unanimously stated:

We wish to endorse not only the legislation itself, but the cooperative efforts that went into its drafting.

Much of what we seek to save in the Connecticut River Valley is the result of the concern and foresight of valley residents and local governments. Their cooperation and interest bodes well for the future success of the riverway.

Mr. President, I would like to pay a special tribute to the Senator from Nevada (Mr. BIBLE) and the Senator from Washington (Mr. JACKSON). These two men have been dedicated to the cause of environmental protection and conservation long before such dedication was worthy of front-page coverage.

Under this leadership, the Senate Interior Committee and the Subcommittee on Parks and Recreation have been in the forefront of developing constructive and progressive legislation. The Nation owes them a great debt.

The Department of the Interior, too, has been instrumental in providing the framework for programs to preserve the Nation's resources. The report, New England Heritage, published by the Bureau of Outdoor Recreation—under the leadership of Dr. Edward Crafts, superbly documented the need to save the Connecticut River. Special tributes must be paid to Jack Hauptman and Roland Handley in the Bureau for their conscientious efforts to develop this program. The present Directors of the Bureau of Outdoor Recreation and the National Park Service, G. Douglas Hofe, Jr. and George Hartzog, Jr., respectively, have admirably followed on with the work to make this program a reality.

Mr. President, the Committee on Interior and Insular Affairs has acted quickly and favorably on S. 4090. It is a bill providing the foundation for a comprehensive program to save a great river. I urge the Senate to adopt this measure.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-1260), explaining the purposes of the measure.

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

PURPOSE

The primary purpose of S. 4090 is to establish a Connecticut Historic Riverway along the southernmost section of the Connecticut River in the State of Connecticut, consisting of some 23,500 acres near concentrations of urban population along an 11-mile stretch of the scenic Connecticut northward from Old Saybrook to East Haddam. The bill envisions a coordinated approach involving Federal, State, and local authorities, to meet the problems of preserving the lower Connecticut River.

The southern boundary of the riverway would be Interstate Route 95 which crosses the Connecticut River approximately a mile and a half above its mouth. The northern limits would be slightly above the East Haddam bridge. The east and west limits are roughly marked by Connecticut Routes 9, 82, and 156.

Within the riverway, the Secretary of the Interior would be authorized to acquire, by condemnation if necessary, up to 5,000 acres. The remainder of the area (17,500 acres) would constitute a conservation zone, and would remain in private ownership exempt from condemnation so long as zoning stand-

ards approved by the Secretary are effectively administered. Thus, the major portion of the riverway, including the most settled areas of the .ocal townships, would consist of lands privately owned and maintained. Property within the Riverway owned by the State of Connecticut could be acquired by the Federal Government only by donation.

The bill establishes a local advisory committee to take an active and constructive part in developing and administering the riverway.

NEED

The last decade has seen a national effort to protect and preserve areas of outstanding natural, scenic, and historical value for the benefits of present and future generations. Programs have been expanded to include areas of immediate value to the citizens of the heavily populated and urbanized sections of the United States.

The Connecticut River remains a relatively unspoiled natural asset close to the rapidly growing urban complex along the eastern seaboard. The beauty, tranquility, and historical setting of the river are of prime importance to the Nation as a whole.

Signs of deterioration are already present. The constant development of new roads coupled with the pressure of expanding northeastern metropolitan areas sustain the finding of "New England Heritage" that well-planned action is required now."

Near and within the proposed Connecticut Historic Riverway, development is taking place with increasing intensity. The small valley towns south of Middletown are expanding with residential and even industrial and commerical development.

Land subdivision along the shoreline threatens the remaining open space access to the river. Marinas are taking up most available sites. In many cases, this development is taking place on tidal wetlands. The continuing encroachment threatens a vital national resource.

The completion of Connecticut Route 9, a major, limited access highway, has made the area more accessible to the general public. The Connecticut Thruway and Interstate 95 have brought the residents of the New York City and Boston metropolitan areas within a few hours automobile travel of the Connecticut River.

The committee has been favorably impressed by the sound and farsighted recommendations of the Bureau of Outdoor Recreation report, "New England Heritage."

After thorough evaluation of this report and a field investigation of the entire Connecticut River Valley, the committee believes that Federal action initiating the major recommendations of "New England Heritage" should be taken as soon as possible.

The committee believes that authorization of this 23,500-acre area is an important first step in developing a complementary Federal, State, and local program to save the Connecticut River.

Furthermore, the interest, cooperation and support of local public officials and residents in Connecticut, has been convincing evidence that action can and should be taken on this project as soon as possible. In 1969, Governor Dempsey of Connecticut appointed a 29-member advisory committee to work with Federal officials in implementing Federal plans for the Connecticut River. In a report to the Senate Interior Committee, the advisory committee unanimously stated:

We wish to endorse not only the legislation itself, but the cooperative efforts that went into its drafting.

BACKGROUND

The Connecticut River flows south through New England for nearly 400 miles to Long Island Sound. The river basin encompasses more than 11,000 square miles in four States and a Canadian Province.

Situated in the center of historic New England, the Connecticut River provides an unmatched array of natural scenic, historic, and recreation resources. It remains the only large river in the United States without a major urban area or seaport at its mouth. The confluence of the river and Long Island Sound is within 120 miles of Boston and 90 miles of New York City. Today, over 20 million people live within 100 miles of the proposed Connecticut Historic Riverway area. Rapid population growth is expected to continue for the rest of the century.

Throughout the river valley, however, there remain large areas of unspoiled beauty and tranquility.

From its source, the Connecticut River is a narrow, swift, coldwater stream which falls 900 feet within its first 30 miles. This northernmost section of the river is marked by the presence of many mountains over 3,000 feet in elevation.

South of its source, in the "coos" area, the river becomes wider and meandering. The mountains close to the Lake Francis-Connecticut Lakes area provide a scenic and impressive panorama.

The small towns appear as tiny outposts in a formidable landscape, and covered bridges take the visitor back to the 19th century. In the fall foliage season, the trees burst forth with colors to match the mountainous grandeur.

From Littleton, N.H., south for almost 200 miles the river flows through rolling, hilly countryside. The river, which here marks the boundary between New Hampshire and Vermont, quietly adds to the pastoral setting.

Reaching Massachusetts, the river forms a wide valley floor with extensive flood plains. Several large and growing metropolitan areas in Massachusetts and Connecticut have increased the demands made on the river at this point. South of Middletown, Conn., the river reenters an upland terrain. The shoreline again becomes steep banks, and little or no valley floor exists. At this point, the Connecticut has become a free-flowing, tidal estuary coursing its final way to Long Island Sound through a particularly attractive setting which has been likened to the Rhine Valley.

The southernmost reaches of the Connecticut River, in the proposed historic riverway, are surrounded by lowlying marsh areas as well as forested hills. The steeper slopes approaching the estuary have not been heavily settled. In the flatlands and on the more gentle slopes are situated small, scenic and historic Connecticut communities such as East Haddam, Chester, Deep River, and Essex.

The lands in and surrounding the riverway area have not been rapidly developed. Many of the qualities which attracted the first settlers in the middle of the 17th century remain today.

Other public efforts to preserve the beauty of this portion of the river already exist. Within the proposed riverway boundary, the State of Connecticut owns Gillette Castle State Park, Selden Neck State Park, and part of the Cockaponsett State Park.

At this point in its course, the Connecticut River is a broad, even majestic estuary, dotted here and there with large and small islands and offshore rocks. The shoreline offers a varied and scenic backdrop. Within a few miles, steep forest-covered bluffs give way to tidal coves, marshes and coastal plains.

The riverway area is a place of unique and varied beauty. This tranquil setting and the neighboring towns and people are a lasting part of the Yankee tradition. In the midst of the populous northeast the Connecticut River remains a showcase of nature's handiwork.

LEGISLATIVE HISTORY

Public Law 89-616, approved on October 3, 1966, directed the Secretary of the Interior to conduct a feasibility study of establishing a Connecticut River National Recreation Area.

Under this authorization, the Bureau of Outdor Recreation undertook and completed an exhaustive and comprehensive study of the Connecticut River Valley. The ensuing report, "New England Heritage," was published in 1968.

The study recommended the establishment of a 56,700-acre Connecticut River National Recreation Area to be administered by the National Park Service. These areas would provide a nucleus to support complementary local, State, and private action protecting the New England environment. The recommended national recreation area would be composed of three units: The Gateway unit in Connecticut; the Mount Holyoke unit in Massachusetts; and a Coos Scenic River unit in Vermont and New Hampshire. The Gateway unit, proposed in "New England Heritage," would be realized in the Connecticut Historic Riverway as proposed in S. 4090.

In April 1969, Senator Abraham Ribicoff, with Senators Dodd, Brooke, Kennedy, and McIntyre, introduced S. 1805, to create a Connecticut River National Recreation Area comprised of units in the States of Connecticut, Massachusetts, Vermont, and New Hampshire. The Subcommittee on Parks and Recreation toured the length of the Connecticut River Valley on May 22 and 23, 1970. Subsequently, Senator Ribicoff introduced S. 4090, containing, in revised form, the major provisions of S. 1805 as they pertain to the State of Connecticut. Subcommittee hearings were held on S. 4090 on August 21, 1970.

LAND ACQUISITION COST AND POLICY

Acquisition of privately owned lands within the Connecticut Historic Riverway is estimated to cost $18,200,000. This amount would include the acquisition of approximately 4,200 acres which the National Park Service deems necessary to effect the purposes of this legislation.

The cost estimates have been arrived at following extensive consultations with local and State officials, including the Connecticut Commissioner of Agriculture and Natural Resources, who administers the State parks and State fisheries. The Park Service has also undertaken field surveys within the proposed riverway.

Section 3 of the bill authorizes the acquisition of up to 5,000 acres of land. The Park Service believes, however, that approximately 4,200 acres will be sufficient land in public ownership.

The Park Service proposes that the following acreage be acquired in these Connecticut townships:

Old Saybrook	40
Lyme	1,380
Old Lyme	126
East Haddam	1,015
Haddam	1,150
Chester	61
Deep River	121
Essex	247

Of the 4,200 acres to be acquired, 3,907, or approximately 93 percent, is unimproved. The total acreage is in the hands of 260 individual owners.

DEVELOPMENT COST AND POLICY

The major portion of the riverway (17,500 acres) would be protected within a conservative zone. Lands in this zone would remain in private ownership with the requirements that zoning ordinances meet standards set forth by the Secretary in conjunction with a local advisory committee.

Similar conservation zones have been put into effect with success at the Cape Cod and Fire Island Seashores.

The committee believes that these zones should not be a vehicle to stifle normal and reasonable commercial and industrial development, but that they can be employed as an effective method to permit continued use of the land while respecting the area's scenic and historical nature.

This belief is in line with the view taken by the Bureau of Outdoor Recreation report, "New England Heritage," which stated:

"The program recommended in this report does not seek to bar future development, but rather to assure that it will be done in a way that respects and enhances the beauty of the Connecticut River Valley."

At hearings, the Park Service indicated that, with one possible exception, existing zoning standards in the area were acceptable for a conservation zone.

Within the publicly owned acreage of the riverway, development will be kept to the strictest minimum. The committee believes, after full discussions with the National Park Service and representatives of the riverway area, that the national interest is better served by emphasizing the historic and scenic values of the lower Connecticut River over intensive recreational development.

Accordingly, Federal administration and development in the riverway will be circumscribed to respect the existing beauty and tranquility of the area. The committee does not intend for the development of any new road system or massive structural facilities.

The development plan for the riverway outlined by the National Park Service at public hearings follows the recommendations of the committee in this respect. The plan calls for the development of a few controlled group camping sites. In addition, certain areas would be established as environmental study areas for use in local school curriculum.

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

S. 4090

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

STATEMENT OF POLICY

SECTION 1. The Congress finds that the Connecticut River and the first tier of towns bordering the river in the States of Connecticut, Vermont, and New Hampshire, and the Commonwealth of Massachusetts, as generally depicted on the map entitled "Connecticut River Valley corridor", numbered NSR–CON–91,000, and dated August 1970, which is on file and available for public inspection in the offices of the National Park Service, Department of the Interior, possess unusual scenic, ecological, scientific, historic, recreational, and other values contributing to public enjoyment, inspiration, and scientific study. The Congress further finds that it is in the best interests of the citiezns of the United States for the United States to take action to preserve and promote such values for the enjoyment of present and future generations, to preserve the natural ecological environment and develop the recreational potential of the area, and to encourage maximum complementary action by State and local governments and private individuals, groups, and associations.

CONNECTICUT HISTORIC RIVERWAY

SEC. 2. In order to provide for conservation of the scenic, scientific, historic, ecological, and other values contributing to public enjoyment, as well as the public outdoor recreation use and enjoyment of the Connecticut River Valley corridor, consistent with the well-being of present and future residents of the area, there is hereby established the Connecticut Historic Riverway (hereinafter referred to as the "riverway"). The boundaries of such riverway shall be as generally delineated on the map numbered NR–CON–40,000, dated July 1970. The Secretary of the Interior (hereinafter referred to as the "Secretary") may revise the boundaries of the riverway from time to time with a view to carrying out the purposes of this Act, with the approval of a majority of the advisory committee for such unit as referred to in section 6 of this Act, but the total acreage within the revised boundaries of the unit shall not exceed twenty-three thousand five hundred acres.

ACQUISITION OF PROPERTY FOR THE CONNECTICUT HISTORIC RIVERWAY

SEC. 3. (a) Within the boundaries of the riverway, the Secretary may acquire without the consent of the owner not to exceed five thousand acres of privately owned lands, waters, and interests therein which he determines are presently needed to carry out the purposes of this Act: *Provided*, That the Secretary may acquire a fee title only in cases where, in his judgment, the acquisition of scenic easements are or other less-than-fee interests would not be adequate to carry out the purposes of this Act. The remaining privately owned property within such unit may not be acquired by the Secretary without the consent of the owner or owners (hereinafter referred to as "owner") for one year following the date of enactment of this Act, and thereafter so long as an appropriate local zoning agency shall have in force and applicable to such a property a duly adopted, valid zoning ordinance approved by the Secretary. In order to carry out the provisions of this section, and following public hearings, the Secretary shall issue regulations, specifying standards that are consistent with the purposes of this Act. Such regulations and amendments thereto must receive the approval of a majority of the advisory committee established in section 6 of this Act before issuance.

(b) The standards specified in such regulations shall have the object of (i) regulating new commercial or industrial uses of such property consistent with the purposes of this Act, and (ii) promoting the protection and development for purposes of this Act of such property by means of acreage, frontage, setback design, and subdivision controls and by prohibiting the cutting of timber, burning of undergrowth, removing soil or other landfill, and dumping or storing refuse in such a manner that would detract from the natural or traditional riverway scene: *Provided*, That such standards shall not discourage the constructive development and use of land for industrial and commercial purposes which are consistent with the purposes of this Act.

(c) Following issuance of such regulations the Secretary shall approve any zoning ordinance or any amendment to any approved zoning ordinance submitted to him that conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment. Such approval shall remain effective for so long as such ordinance or amendment remains in effect as approved.

(d) No zoning ordinance or amendment thereof shall be approved by the Secretary which (i) contains any provisions that he considers adverse to the protection and development of such property in accordance with the purposes of this Act, or (ii) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under, or any exception made to, the application of such ordinance or amendment.

(e) If any property, with respect to which the Secretary's authority to acquire by condemnation has been suspended according to the provisions of this section, is made the subject of a variance under, or becomes for any reason an exception to, such zoning ordinance, or is subject to any variance, exception, or use that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time of passage of such ordinance, the Secretary may terminate the suspension of his authority to acquire such property by condemnation: *Provided*, That the owner of any such property shall have ninety days after written notification from the Secretary to discontinue the variance, exception, or use referred to in such notification.

(f) The Secretary shall furnish to any party in interest, upon request, a certificate indicating the property with respect to which the Secretary's authority to acquire by condemnation is suspended.

ADDITIONAL PROPERTY ACQUISITION PROVISIONS

SEC. 4. (a) The Secretary is authorized to acquire the lands, waters, and interests therein (including scenic easements) within the riverway unit by donation, negotiated purchase with donated or appropriated funds, transfer, exchange, or condemnation except that such authority to acquire by condemnation shall be exercised only in the manner and to the extent specifically provided in section 3 of this Act.

(b) With the exception of any lands which the Secretary determines are presently needed for public use facilities to carry out the purposes of this Act, any owner of improved property within the unit on the date of its acquisition by the Secretary may elect, as a condition to such acquisition to retain a right of use and occupancy of the improved property for noncommercial residential and agricultural purposes for a period ending at the death of the owner or his spouse, whichever occurs later, or for a fixed term not to exceed twenty-five years. The Secretary shall pay to the owner of the fair market value of the property on the date of its acquisition less the fair market value on such date of any right retained by the owner. Any retained right of use and occupancy may be transferred or assigned. Whenever the Secretary finds that the property or any portion thereof has ceased to be used for noncommercial residential purposes, he may terminate the right of use and occupancy upon tendering to the holder thereof an amount equal to the fair market value of the portion of said right which remains unexpired on the date of termination.

(c) As used in this section, the term "improved property" shall mean a one-family dwelling the construction of which was begun before July 1, 1970, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling and land for noncommercial residential or agricultural purposes, together with any structures accessory to the dwelling which are situated on the land so designated: *Provided*, That the Secretary may exclude from the land so designated any water bodies together with so much of the adjacent land as he deems necessary for public access thereto.

(d) Any property or interests therein within the unit which are owned by a State or by any political subdivision thereof or permanently preserved for conservation purposes under the ownership of a nonprofit, nonstock organization may be acquired only by donation. Notwithstanding any other provision of law, any Federal property located within a unit of the recreation area may, with the concurrence of the agency having custody thereof, be transferred to the administrative jurisdiction of the Secretary, without transfer of funds, for administration by him as part of the recreation area.

ADMINISTRATIVE PROVISIONS

SEC. 5 (a) the Secretary shall administer and protect the riverway area with the primary aim of conserving the natural resources located within it and preserving the area in as nearly its natural state and condition as possible. No development or plan for the convenience of visitors shall be undertaken in the riverway which would be incompatible with the overall lifestyle of residents of the area, accepted ecological principles, the preservation of the physiographic conditions now prevailing, or with the preservation of such historic sites and structures as the Secretary may designate.

(b) The riverway shall be administered, protected, and developed by the Secretary

in accordance with the provisions of this Act and the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 et seq.), except that the Secretary may utilize any other statutory authority available to him for the conservation and management of natural resources to the extent he finds such authority will further the purposes of this Act.

(c) The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the riverway in accordance with the applicable laws of the States concerned and of the United States, except that the Secretary may designate zones where, and establish periods when, no hunting, no fishing, or trapping shall be permitted for reasons of public safety, fish, or wildlife management, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary prescribing any such restrictions shall be issued only after consultation with the appropriate agency of the State concerned.

(d) The Federal Power Commission shall not authorize the construction, operation, or maintenance within the riverway of any dam, water conduit, reservoir, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.): *Provided*, That the provisions of that Act shall continue to apply to any project, as defined in that Act, already licensed.

(e) Designated National Park Service employees of the riverway may make arrests for violations of any Federal laws or regulations applicable to the area, and they may bring the accused person before the nearest magistrate, judge, or court of the United States having jurisdiction in the premises.

ADVISORY COMMITTEE

SEC. 6. (a) There is hereby established an advisory committee for the Connecticut Historic Riverway.

(b) Such committee shall be composed of members appointed for a term of two years by the Secretary as follows:

(1) a member appointed to represent the State of Connecticut. Such appointments shall be made from recommendations of the Governor of the State of Connecticut;

(2) a member appointed to repreesnt the appropriate regional planning commissions or agencies of Connecticut. Such appointments shall be made from recommendations of the heads of such commissions;

(3) a member appointed to represent each town referred to in section 1 of this Act that is directly affected by the establishment of the riverway and such appointments shall be made from recommendations of the governing body of such towns; and

(4) a member to be designated by the Secretary.

(c) The chairman of the committee shall be elected by the membership thereafter for a term of not to exceed two years. Any vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(d) All members of the committee shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the committee in carrying out their responsibilities under this Act on the presentation of vouchers signed by the chairman.

(e) The Secretary or his delegate shall consult regularly with the committee with respect to all matters relating to the development and administration of the riverway and with respect to carrying out the provisions of this Act, including but not limited to matters relating to the acquisition of lands, the issuance of regulations specifying standards for zoning ordinances, and the administration of the riverway.

(f) The committee shall make available to the Secretary an annual report reviewing matters relating to the development of the riverway, including land acquisition and the zoning standards policies, and shall make recommendations thereto.

CONNECTICUT RIVER VALLEY CORRIDOR

SEC. 7. (a). The Secretary, in accordance with authority contained in the Act of May 28, 1963 (77 Stat. 49), and in consultation with the New England River Basin Commission and the advisory committee established by section 6 of this Act, shall encourage coordinated planning for the conservation and development of the outdoor recreation resources of the Connecticut River Valley corridor which is defined for the purposes of this section as that part of the Connecticut River Valley corridor depicted on the map referred to in section 1 of this Act which is located within the State of Connecticut. The Secretary shall give particular attention to encouraging and coordinating the conservation and development of the outdoor recreation resources of the corridor that are outside the boundaries of the riverway, and he is authorized to provide technical assistance to State and local governments and private individuals, groups, and associations with respect to the conservation and development of such resources. The Secretary is authorized to establish a regional office of the Bureau of Outdoor Recreation within the boundaries of the Connecticut River Valley corridor in order to facilitate the planning and coordination under this section.

(b) The Secretary shall encourage State, regional, county, and municipal bodies to adopt and enforce adequate master plans and zoning ordinances which will promote the use and development of privately owned lands within the corridor in a manner consistent with the purposes of this section, and he is authorized to provide technical assistance to such bodies in the development of such plans and ordinances.

(c) The Secretary shall cooperate with the appropriate State and local agencies to provide safeguards against pollution of the Connecticut River and unnecessary impairment to the scenery thereof.

(d) In order to avoid, insofar as possible, decisions or actions by any department, agency, or instrumentality of the United States which could have a direct or adverse effect on the outdoor recreation resources of the corridor, all departments, agencies, and instrumentalities of the United States shall consult with the Secretary concerning any plans, programs, projects, and grants under their jurisdiction within the corridor. Any Federal department, agency, or instrumentality before which there is pending an application for a license for any activity which could have such effect on the outdoor recreation resources of the corridor shall notify the Secretary, and, before taking final action on such application, shall allow the Secretary ninety days to present his views on the matter.

(e) The Secretary of Agriculture shall study means of preserving the agricultural, forest, and rural open space character of the corridor, and shall submit a report of his findings and recommendations to the President and Congress within one year after the date of this Act.

SHORELINE EROSION CONTROL

SEC. 8. The Secretary of the Interior and the Secretary of the Army shall cooperate in the study and formulation of plans for shoreline erosion control of the Connecticut River; and any protective works for such control undertaken by the Chief of Engineers, Department of the Army, shall be carried out in accordance with a plan that is acceptable to the Secretary of the Interior and is consistent with the purposes of this Act.

APPROPRIATIONS

SEC. 9. There are hereby authorized to be appropriated not to exceed $23,000,000 to carry out the provisions of this Act.

BILLS PASSED OVER

On request of Mr. MANSFIELD, the following bills were passed over:

Calendar No. 1280, H.R. 10634, State Income Taxation of Interstate Carrier Employees; Calendar No. 1281, H.R. 18776, Sleeping Bear Dunes National Lakeshore; and Calendar No. 1282, S. 4432, the Budget and Accounting Improvement Act of 1970.

CONVEYANCE OF CERTAIN LANDS FOR RECREATIONAL PURPOSES

The bill (H.R. 10837) to provide for the conveyance to Pima and Maricopa Counties, Ariz., and to the city of Albuquerque, N. Mex., of certain lands for recreational purposes under the provisions of the Recreation and Public Purposes Act of 1926 was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1267), explaining the purposes of the measure.

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

PURPOSE

This bill authorizes the Secretary of the Interior to convey to Pima and Maricopa Counties, Ariz., and to the city of Albuquerque, N. Mex., for recreational purposes in accordance with the provisions of the Recreation and Public Purposes Act, but without regard to the acreage limitation of that act, certain public land now held under lease.

BACKGROUND

Each of the three governmental units involved herein has had under lease, for recreational purposes, large acreages of public land and each year has purchased the maximum acreage (640) permitted under the Recreation and Public Purposes Act. Each has developed plans for the further development of the lands now held under lease and has available the funds to complete the planned development in such a way that the leased areas would contribute fully to the recreational needs of the communities. However, in order for each to meet its growing recreational needs and to justify the further expenditure of public funds on the land, it is clearly desirable that it obtain title to the land rather than continue the present lease arrangement. H.R. 10837 would waive the acreage limitation of the Recreation and Public Purposes Act and would permit the two counties in Arizona and the city of Albuquerque to purchase all or any part of the lands now under lease. Section 1(b) of that act (43 U.S.C. 869(b)), now limits conveyances to 640 acres per year to any political subdivision of a State. Maricopa County now has 68,758 acres (seven parks) under lease; Pima County, 3,840 acres (one park); and the city of Albuquerque, 7,042 acres (three parks) under lease. At the present rate of acquisition, it would take Maricopa County, with the largest acreage, over 100 years to obtain the land it needs for park purposes and Pima County, with the smallest, would require 6 years.

Enactment of H.R. 10837 would affect only the acreage limitation imposed by the Recreation and Public Purposes Act, and not the other conditions and conveyance. Thus, all minerals would be reserved to the United States and the lands, if used for other than recreational purposes, would revert to the United States. The purchaser would pay not less than $2.50 per acre.

All of these areas receive heavy recreational use and their further development to ac-

commodate the increasing recreation pressures is urgently needed. The area within Pima County received over a million visitors annually and the areas in Maricopa County and those near Albuquerque received correspondingly heavy use.

COST

Enactment of the bill will involve no Federal expenditure.

CONVEYANCE OF CERTAIN LAND IN CALIFORNIA BY THE SOUTHERN PACIFIC CO.

The bill (H.R. 12960) to validate the conveyance of certain land in the State of California by the Southern Pacific Co. was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1268), explaining the purposes of the measure.

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

PURPOSE

This bill validates and confirms, insofar as the interest of the United States is concerned, 20 conveyances by the Southern Pacific Railroad Co. covering lands in San Joaquin County, Calif., originally granted to the railroad for right-of-way purposes by the Federal Government. Provisions in the bill retain a right-of-way for the railroad company and reserve to the United States all minerals in the lands.

BACKGROUND

The 20 parcels of land contain approximately 13 acres. They are part of a 400 foot right-of-way granted to the Central Pacific Railroad Co. by the act of July 1, 1862. The Southern Pacific Co. is the successor in interest to the Central Pacific. Nineteen of these parcels are within the city limits of Lodi, Calif., and the remaining one is adjacent thereto. The land is presently used for light and heavy industry, housing, and one parcel has been developed as a grape vineyard. All parcels have been claimed and used for these purposes for many years. The committee is informed that the present individuals, or their predecessors in interest, have paid taxes on the 20 parcels since patents were issued, which in most cases would be in excess of 70 years and in some for more than 100.

The act of July 1, 1862, did not grant full title to the railroad for the lands within the right-of-way. All minerals were reserved to the United States and the railroad received only the right to use the surface for right-of-way and associated purposes with an implied reverter to the United States in the event the lands ceased to be used for the purpose for which granted.

When the United States issued patents to the lands adjoining the railroad right-of-way, the lands within the right-of-way were included in the total area so patented. Because the railroad company did not actively claim the entire 400-foot strip until about 1925, the adjoining owners assumed ownership and made use of most of the right-of-way lands except for a 50-foot strip on each side of the mainline track that was clearly defined and used by the railroad. Thus, a long history of use has been established and substantial improvements have been made on these lands. After 1925 it was recognized that all of the lands within the 400-foot strip were under the control of the railroad and at various times legislation, similar to the present bill, has been passed by Congress to validate conveyances made by the company to individuals using and occupying such land. In the present situation, the Southern Pacific Co. made the 20 conveyances in 1966 for amounts said to be not more than $100.

The act of March 8, 1922, provides that upon a finding of abandonment or forfeiture, either by act of Congress or a court of competent jurisdiction, the lands within a railroad right-of-way pass to the adjoining landowner, except that within a municipality the lands pass to the municipality. The railroad company does not consider its 20 conveyances, subject to a 100-foot right-of-way to be an abandonment of the original 400-foot right-of-way, and no abandonment has been found either by Congress or the courts. Moreover, the city of Lodi, which would be the beneficiary of any abandonment of 19 of the 20 tracts, has by Resolution No. 3367, dated April 1, 1970, recommended enactment of the pending legislation.

Because of the limitations under which the right-of-way was granted to the railroad company, the 20 conveyances made by the company to the individuals do not convey a marketable title to the lands. Enactment of H.R. 12960 would validate and legalize these conveyances, insofar as any interest of the United States is concerned, and would eliminate the necessity of legislation by Congress or a decision by the courts regarding the complex question of abandonment or forfeiture of a portion of a railroad right-of-way.

COST

The provisions of H.R. 12960 involve no additional administrative cost to the United States.

KING RANGE NATIONAL CONSERVATION AREA

The Senate proceeded to consider the bill (H.R. 12870) to provide for the establishment of the King Range National Conservation Area in the State of California which had been reported from the Committee on Interior and Insular Affairs with amendments on page 1, line 6, after the word "section", strike out "10" and insert "9"; on page 5, line 12, after the word "section", strike out "10" and insert "9"; on page 8, line 20, after the word "section", strike out "10" and insert "9"; and in line 22, after the word "section", strike out "7" and insert "6".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1270), explaining the purposes of the measure.

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

PURPOSE

H.R. 12870 authorizes and directs the Secretary of the Interior to establish the King Range National Conservation Area in the State of California. It directs the Secretary to consolidate and manage the public lands within the area under a program of multiple use and sustained yield and provides the Secretary with the necessary authority and management tools to block up the public lands, by acquisition or by exchange, with private holdings to eliminate the existing checkerboard land pattern. The area will be administered by the Bureau of Land Management for the conservation, development, and management of all its natural resources.

BACKGROUND AND OBJECTIVE

The King Range area is a mountainous and relatively undeveloped region along the coast in southern Humboldt and northern Mendocino Counties. The geography and ecology of the region are diverse and varied. It contains seashore, forested mountains and open meadows, and includes some primitive area near the coast that is virtually untouched by man. It also contains the King Mountain Range, which juts out into the Pacific Ocean south of Eureka, Calif., and also the adjacent 9 miles of shoreline. The seashore in this area is among the most beautiful and rugged along California's Pacific coast.

Two key features of the King Range country are its inaccessibility and rugged terrain. This area is the westernmost bulge of the California coast. The highways all swing inland to bypass the Pacific Ocean's most precipitous stretch of shoreline. With the exception of Shelter Cove, most of the ocean frontage are in Federal ownership. There are very few roads and most of those that do exist are suitable for use only by four-wheel drive vehicles. Much of the area inland is likewise steep and rough terrain.

This remote and slow-paced country has been called California's "unkonwn coast" because nowhere else in California does so much roadless, inaccessible coast face the Pacific. Kings Park, the most prominent feature of the range, rises to more than 4,000 feet only 3 miles from the ocean.

In addition to lack of access, proper management of public lands in this area is complicated by the land ownership pattern. There are many separate parcels of public land checkerboarded and otherwise intermingled among private holdings. Also, small parcels of private lands are isolated within the public holdings. This intermingled ownership obviously does not make for efficient management by either the private or public managers. It particularly discourages soil and water conservation investment.

Much of the logged-over forest lands, and rangeland also, is badly eroded or covered with brush. Reforestation and reservation are urgently needed. There are 3,500 acres of nonstocked timberland alone.

The King Range also includes scenic and other outdoor recreation resources of a high order. There are spectacular stretches of seashore, including beautiful remote beaches and coves, magnificent stands of virgin Douglas-fir, as well as sugar pine, madrona, bay, and redwood. Wildlife include deer and other species of game of interest to sportsmen.

A number of fine private sheep ranches adjoin the King Range area on the north and make grazing use in the area. The grazing capacity of the public lands in the area is an estimated 800 animal unit months. Leased lands have a rated capacity of about 435 AUM's.

The predominant commercial timber in the area is Douglas-fir. The area's timber resources are estimated to include 240 million board feet of mechantable size. Total potential yearly production of forest products, based on reasonably full stocking, and full use of the presently unstocked timberland is estimated to be about 10 million board feet a year.

The public lands within this area are administered by the Department of the Interior through the Bureau of Land Management. H.R. 12870 would assist in the effective administration and management of these lands in a variety of ways that would enhance their value and assure their preservation for the enjoyment of future generations. However, one of the unique features of H.R. 12870 is that it does not contemplate or intend to eliminate private holdings or private enterprise within the proposed conservation area. These private holdings and activities are expected and encouraged to continue and to contribute to the overall economy and attractiveness of the entire area. Only when private activities are clearly and unquestionably not in harmony with the intended uses

of the area will there be reason for the Federal Government to regulate or control either existing or future private uses. In this respect, H.R. 12870 differs from most other land management proposals where a high degree of Federal control and regulation is established.

NEED

This bill authorizes the study and investigation of some 51,000 acres of Federal and private land in northern California. From within this tract, the King Range National Conservation Area, containing approximately 44,500 acres will be established and managed under the jurisdiction of the Department of the Interior. Of the lands involved, about two-thirds (31,500 acres) are already in public ownership and are administered by the Bureau of Land Management. However, one of the more serious problems faced by both public land managers and private landowners, is the fragmented or checkerboard land pattern. This prevents full and economical development of the land and its resources either by private individuals or by the Federal Government. One of the prime objectives of H.R. 12870 is to facilitate the blocking up of landholdings, through land exchanges or by acquisition, to permit more efficient and effective land management practices by all landholders. To accomplish this, the Secretary of the Interior is authorized to use existing authority and also is granted certain new land exchange and acquisition authority by H.R. 12870. In addition, H.R. 12870 establishes certain restrictions on the location of mining claims within the conservation area that are deemed necessary and desirable to assure that mining activities within the area, while permitted and encouraged to continue, do not materially interfere with other land values and resources uses.

H.R. 12870 establishes several requirements for the exchange of public lands. Among these are (1) the offered and selected lands must be in the same county; (2) if the offered or selected lands have a value of at least two-thirds of the other, the difference in value may be equalized by the acceptance of cash; and (3) either party to an exchange may reserve minerals, easements or rights-of-way. The Secretary is also granted authority to (1) identify appropriate public use of the public lands; (2) construct and maintain roads, trails and other access and recreational facilities; and (3) reforest and revegetate and install soil and water conservation works to control erosion and improve forest and timber production.

While mineral activity is authorized to continue within the area, mining claims located in the future would be subject to regulations designed to protect environmental and scenic values. These restrictions would be carried in patents issued for claims located after the date of the act.

Grazing will continue within the area as will timber production. Hunting and fishing will also be permitted subject to certain necessary restrictions on hunting during certain times or at locations necessary for public safety, administration, management, or public use and enjoyment.

H.R. 12870 authorizes the Secretary to administer the public lands within the conservation area under any authority available to him for the conservation, development, and management of natural resources on public lands in California withdrawn by Executive Order No. 6910 of November 26, 1934, to the extent he finds such authority will further the purposes of H.R. 12870. Executive Order No. 6910 was one of several orders that withdrew vacant unreserved and unappropriated public land from settlement, location, sale, or entry, pursuant to the act of June 28, 1934, more commonly known as the Taylor Grazing Act. H.R. 12870 also revokes Executive Order No. 5237 of December 10, 1929, effective as of the date the Secretary establishes the conservation area. This order withdrew public lands in this general area from any type of disposition pending their classification. As H.R. 12870 directs the Secretary to classify these lands, this order is no longer necessary.

FORT POINT NATIONAL HISTORIC SITE

The bill (H.R. 18410) to establish the Fort Point National Historic Site in San Francisco, Calif., and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1269), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 18410 is to authorize the establishment of the Fort Point National Historic Site in California. The Senate passed a similar bill in the 90th Congress, but it was not acted upon by the House of Representatives.

BACKGROUND, LOCATION, AND DESCRIPTION

Shortly after becoming a nation, the United States began to fortify its harbors. The reason for this is easy to understand, because the most serious potential enemies of the young country were thousands of miles away and the threat which they presented was essentially by sea, rather than by land. In the early period, most of the forts constructed employed the skills of French engineers, because there were few qualified Americans for such undertakings. Later, however, after the establishment of the Military Academy at West Point, American influence expanded and by 1830 the design and construction of coastal defenses was firmly established and rivaled those being constructed by renowned European engineers.

Many of the forts constructed in the first half of the 19th century played varying roles in important events during the Civil War, but the principal function of most of them was to deter enemies from abroad. Altogether, about 3 dozen of differing quality, sizes, and shapes, were built. Thirty still exist and probably constitute the oldest surviving group of major structures in the United States.

Of these only a few are truly outstanding architecturally. The fort on Fort Point is one. Begun in 1853—just 3 years after California became a State—it represents the culmination of this entire era of military architecture and construction. It incorporates most of the technical and architectural refinements developed in previous decades—the most fundamental of which was the arrangement of guns in multiple tiers.

Forts with multiple tiers were constructed only at the most important harbors. Only two were built with four tiers: one at Fort Point on San Francisco Bay—which was the only major fortification to be built on the west coast—and the other, at the other end of the continent, on New York Harbor. These two forts represent the climax of this era of military construction.

Although technically not unique, Fort Winfield Scott (as it was officially named in 1882) offers an outstanding opportunity for historic preservation. Located, as it is, in the midst of one of the Nation's largest cities where the flow of visitors from throughout the Nation numbers in the millions every year, it is expected that the rate of visitation will reach nearly a half-million annually. Even now, with the fort open only on weekends, with none of the advantages of national recognition, visitations are in the neighborhood of 200,000 each year.

Probably no other available fort is so ideally situated as is Fort Point, as it is commonly called. It well preserved primarily because of the fact that it has been within an active military post continuously since its construction. Notwithstanding its continuous use from 1861 through 1900 and the installation of some small rapid fire guns on it during World War II, it has not been structurally modified to any significant extent since its construction. In fact, because of its historical and architectural value, the designer of the Golden Gate Bridge made a special effort to save it from destruction.

Forts in America are somewhat like castles in Europe. They are relatively numerous and all are obsolete for practical purposes. They have many similarities, but all of them are interesting to the general public, because they represent a bygone era. Since they can usefully add to the enjoyment and edification of the public, they should be utilized for that purpose whenever practicable. Through them, the story of the growth and development of the Nation can be told.

COST

Since the fort and the lands involved in H.R. 18410 are already federally owned, no land acquisition costs will be incurred. The only appropriations which this legislation will entail, other than the usual costs for operation and maintenance, will be those needed for development of the site. As indicated above, the fort itself is well preserved, the expenses to be incurred are largely associated with the anticipated visitor use. The development of roads, parking areas, trails, and viewpoints, as well as the construction of a visitor information station and picnic areas and the general repair and refurnishing of the fort will require an investment of approximately $3,500,000. An additional $1,900,000 will probably be needed if the existing seawall requires rehabilitation and reinforcement, if the pier is rehabilitated, and if slope stabilization and landscaping are required. Taking all of these things into consideration, and assuming that the submerged lands and the additional 10 acres of fast lands are transferred to the Department of the Interior for use as a part of the proposed national historic site, the bill authorizes an appropriation of not more than $5,250,000.

In making this recommendation, it should be noted that the bill authorizes the authorization to fluctuate with current construction costs as indicated by standard engineering costs indicies.

JURISDICTION OVER LANDS

As originally proposed, the legislation would have authorized the establishment of the national historic site when the Secretary of the Interior acquired sufficient lands for that purpose. All of the lands, including the submerged lands, are presently under the jurisdiction of the Department of the Army and the bill provided that they would be transferred only on such terms as might be mutually agreed upon between the heads of the two agencies. This provision would have left the establishment of the historic site highly conjectural. Because of this fact, an amendment was adopted by the House of Representatives providing that a 29-acre historic site is established as of the date of enactment of this legislation. There seems to be no question about the transfer of the fort and the 29 acres associated with it for this purpose; therefore, the provision is temporarily limited to that portion of the original proposal. If the adjacent submerged lands and the 10-acre tract are subsequently transferred to the Secretary of the Interior, the bill permits the boundaries of the historic site to be adjusted to include them and it provides that they shall be administered as a part of the historic site. Sixty days before

any transfer can become effective, however, the bill requires that the details of the proposed transfer be referred to the appropriate congressional committees for review. The concern of the committee is that this transfer should not be bound with conditions incompatible with the historic purposes to which this site is dedicated.

The bill also revises the amount authorized to be appropriated to include the total amount included in the bill, as introduced, reflected the appropriations once thought to be necessary for the first 5 years only. Naturally, if the Department of the Army retains jurisdiction over the submerged lands and over the 10-acre tract presently used for a motor pool, it should share proportionally in the costs attributable to the developments from which it benefits. Among the costs which it should reasonably share are those associated with the rehabilitation and reinforcement of the seawall, rehabilitation of the prier, and improvements on the roads which it will use, and so forth. On the other hand, if these lands adjacent to the historic site are administered as part of the national park program, then the responsibility for them should rest exclusively with the administering agency.

The Senate Committee on Interior and Insular Affairs concurs in the action of the House of Representatives in adopting these amendments.

EXCHANGES OF STATE SCHOOL LANDS FOR CERTAIN RESERVED PUBLIC LANDS

The bill (H.R. 13125) to amend section 11 of the act approved February 22, 1889 (25 Stat. 676) as amended by the act of May 7, 1932 (47 Stat. 150), and as amended by the act of April 13, 1948 (62 Stat. 170) relating to the admission to the Union of the States of North Dakota, South Dakota, Montana, and Washington, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1265), explaining the purposes of this measure.

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

PURPOSE

H.R. 13125 would amend section 11 of the Statehood Act of the States of North Dakota, South Dakota, Montana, and Washington to permit the exchanges of State school lands for certain reserved public lands. It would also approve the exchange of certain reserved national forest land already made and would grant to the four States the right to lease school lands without Federal restriction.

BACKGROUND

The original Statehood Act of 1889 for the States of North Dakota, South Dakota, Montana, and Washington made no provision for an exchange of school lands by the States. This was amended in 1932 to authorize exchanges but provided that any such exchange with the United States would be limited to surveyed, nonmineral, unreserved public lands of the United States. This is the present law, and it precludes exchanges for lands within the national forest as such lands are considered to be reserved.

H.R. 13125, would remove this restriction and permit exchanges for "Federal lands that are surveyed, nonmineral, unserved public lands, or are reserved public lands that are subject to exchange under laws governing the administration of such Federal reserved public lands." H.R. 13125 would also approve and legalize certain land exchanges heretofore consummated by the State of Washington and the Forest Service. These exchanges, although made in good faith, are nonetheless contrary to existing law.

The problem of exchanging State school lands for reserved public lands has arisen primarily in the State of Washington. Both that State and the Forest Service have been working on mutually advantageous land exchanges for the purpose of blocking up holdings. This would assist in solving numerous resource protection problems, and the elimination of a checkerboard land pattern would result in more efficient management and utilization of resources. Hazards such as areas of high forest fire risks, soil erosion, and trespass can be eliminated or reduced.

The House of Representatives adopted two amendments suggested by the Department of the Interior which limit exchanges to lands within the State. In addition, the committee approved an amendment which removes the statutory restrictions on the leasing of State lands. This permits the States to lease lands under such terms and conditions as the State legislature deems appropriate. The Senate Interior and Insular Affairs Committee concurs in this action.

COST

Enactment of H.R. 13125 will not involve any Federal expenditures.

ICE AGE NATIONAL SCIENTIFIC RESERVE, WIS.

The bill (H.R. 4172) to authorize the Secretary of the Interior to provide financial assistance for development and operation costs of the Ice Age National Scientific Reserve in the State of Wisconsin, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1266), explaining the purposes of the measure.

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

PURPOSE OF BILL

The purpose of H.R. 4172 is to authorize a very limited appropriation of funds for Federal participation in the development, operation, and maintenance of the Ice Age National Scientific Reserve in Wisconsin. These Federal appropriations would supplement funds appropriated by the State of Wisconsin for the purpose and other moneys from the State's share of allocation under the Land and Water Conservation Fund Act.

NATIONAL SIGNIFICANCE OF THE ICE AGE NATIONAL SCIENTIFIC RESERVE

The Ice Age National Scientific Reserve consists of nine noncontiguous units located at areas recognized for their outstanding characteristics as remnants of the ice age. Altogether, when protection is extended to all of the necessary lands, the nine units will total about 32,500 acres—stretching roughly 500 miles across the State.

From the evidence available, scientists believe that the glacial remains found in the reserve result from the last stage of continental glaciation. It is generally agreed that the massive ice shield advanced and retreated four times—each time its ebb and flow altered the contours of the lands it scraped and gouged. But the direct contact of this creeping mass was not its only effect on the environment. It produced dramatic climatic changes for vast untouched areas and it locked in so much of the earth's water supply that continents were probably joined together. Few other natural phenomena could be said to equal the impact of the ice age on the fact of the land and the world as we now know it.

The Wisconsin stage of the Pleistocene epoch, as geologists call the ice age, probably ended about 10,000 years ago. Much remains to be learned about the glacial period, but its immediate impact is widely recognized. The thousands of lakes, hills, ridges, and the like which constitute some of the dominant land features of the Upper Midwest all reflect this influence. In geographical scope, the immediate effects of the ice sheet stagger the imagination, but relatively few of the most important, undisturbed remnants of this phenomenal event can be protected for scientific study and public use.

Probably the most outstanding of the existing remnants of continental glaciation in the world are found in the State of Wisconsin—most certainly, they are the best examples found in this country. It was because of the outstanding character and national scientific significance of these remnants that the Congress initially authorized the Secretary of the Interior to cooperate with the State of Wisconsin in establishing a national scientific reserve.

Normally, an area of such importance to our natural heritage would merit consideration as a wholly national program. In this instance, however, the State of Wisconsin was already actively engaged in a preservation-protection program involving some of the most important geological areas. Since the State had shown an interest in some of these areas and had taken steps to make them available to the public, it was natural to devise a cooperative program so that the State could receive some financial assistance in return for helping the Federal Government to meet a goal recognized to be nationally desirable.

LEGISLATIVE BACKGROUND

In approaching this unique situation, the Congress has adopted some innovations. First, Public Law 88–655 authorized the Secretary of the Interior to grant financial assistance to the State of Wisconsin to help complete the acquisition of needed lands. While $750,000 was authorized to be appropriated for this purpose, it was generally understood that these funds would not be made specially available if the Congress enacted the Land and Water Conservation Fund Act. That act, which was approved about the same time, provided matching assistance to all States on the basis of a fixed formula; consequently, the $750,000 authorization in Public Law 88–655 was not needed and has not been funded. All land acquisition moneys for the Ice Age National Scientific Reserve are to be derived from direct appropriations by the State and matching moneys allocated to it pursuant to the provisions of the Land and Water Conservation Fund Act.

No commitment was authorized with respect to Federal participation in the costs for development or operation and maintenance of the reserve; however, the act did authorize the Secretary, in cooperation with State and local governmental authorities, to formulate "a comprehensive plan for the protection, preservation, and interpretation of outstanding examples of continental glaciation in Wisconsin." This plan, together with the joint recommendations of the Secretary and the Governor of Wisconsin, was to be forwarded to the Congress. On the basis of the plan received and its recommendations, H.R. 4172 was introduced.

NEED

As passed by the House, H.R. 4172 does not authorize any funds to be appropriated for land acquisition purposes. This fact, of course, does not preclude the State of Wisconsin from using all or part of its allocated share of the land and water conservation

fund as matching money for the land acquisition program.

Because of the national significance of the reserve, the bill does provide some incremental Federal assistance which would not normally be available for outdoor areas administered by a State. In addition to funds allocated to the State under the Land and Water Conservation Fund Act which may be used to finance up to 50 percent of the development costs, H.R. 4172 authorizes appropriations to be made to the Department of the Interior to pay half of the remaining development costs. This incremental authorization is strictly limited to no more than 25 percent of the cost of an individual project, and the maximum amount which may be appropriated for development assistance is limited to $425,000.

The bill also authorizes appropriations to be made to help finance the costs of operation and maintenance. It will permit the Federal Government to underwrite these administrative costs on a 50–50 matching basis with the State. These costs are presently estimated at about $158,000 annually—the Federal share of which would be $79,000 per year. While they might vary somewhat from year to year, the Congress would retain reasonable control over these expenditures through the appropriations process.

The committee recognizes that this authorization represents a deviation from the usual practice, but it views this situation as unique. In the absence of State cooperation and leadership in preserving these significant scientific areas, the Congress would probably be called upon to establish a federally administered facility of some type which would involve a far greater expenditure than the amount contemplated by this legislation.

It should also be recognized that this is a *national* scientific reserve. If the Federal Government makes no tangible contribution to the program, it would be *national* in name only. So far, the only Federal expenditure directly attributable to this project is the $150,000 which was authorized and appropriated to prepare the comprehensive plan. If H.R. 4172 is enacted, as recommended, Federal participation would be relatively nominal and, in return, a valuable national goal would be achieved.

COST

Federal participation in financing the development of the Ice Age National Scientific Reserve is limited. Not more than 25 percent of the cost of a development project may be federally funded; the remainder is to be financed from Wisconsin's allocated share of the land and water conservation fund (50 percent) and by direct appropriations to be made by the State (25 percent). The total commitment of the United States toward the development of all projects for the reserve is limited to $425,000.

The only other funding authorization contained in H.R. 4172 applies to operation and maintenance costs. Under the terms of the bill, Federal funds, if appropriated, may be used to match State funds made available for the administration of the reserve. Based on current estimates, the Federal share is expected to be $79,000 annually. State operation of the nine detached units should be most efficient, because the State can carry on these responsibilities in conjunction with its administration of other nearby or adjacent areas administered by the State. No Federal employment, other than technical assistance, is contemplated by this legislation. In the event that some emergency or unusual circumstances require the use of Federal employees at the reserve, the value of their services is to be considered as a part of the Federal share of the costs of administration.

As stated, no funds are authorized to be appropriated by the terms of H.R. 4172 for land acquisition. No part of the bill, however, should be construed as restricting the authority to provide financial assistance to the State as authorized by the Land and Water Conservation Fund Act.

Mr. NELSON subsequently said. Mr. President, with Senate passage today, H.R. 4172 to implement the Ice Age National Scientific Reserve, a Wisconsin project that is a hallmark of cooperative Federal-State efforts, will go to the President to be signed into law. This measure has already passed the House, and has been unanimously approved by the Senate Interior Committee without amendment.

H.R. 4172 provides for two essential steps to implement Public Law 88–655 which set up the reserve. First, it authorizes a Federal contribution not to exceed $425,000 for development of this Federal-State project, and second, it authorizes 50–50 Federal-State matching for the cost of operating and maintaining the reserve, with the Federal share expected to be $79,000 annually.

This very modest Federal investment will bring a major return in protecting for the Nation an important scientific, recreational, and scenic resource, developing and managing this facility to meet Federal standards, and providing a splendid opportunity for the Federal Government and the State to work cooperatively on a project.

The reserve comprises nine areas throughout Wisconsin, all containing unique remnants of the ice age which ended about 10,000 years ago. The reserve will not only offer scientists the best area in this country to study the glacial age, but will protect in perpetuity a major scenic and recreation resource for the benefit of the people in Wisconsin, the Upper Midwest and the Nation.

Further, the reserve will serve as another key link in Wisconsin's developing network of national scenic and wilderness areas, complementing the recently established Apostle Islands National Lakeshore the Saint Croix, Namekagon and Wolf national scenic rivers, plus the existing national forests and wildlife refuges and the State's own recreation system under the ORAP program.

The measure was introduced in the House by Wisconsin Congressmen ROBERT KASTENMEIER, HENRY REUSS, and CLEMENT ZABLOCKI, whose efforts were instrumental in the House passage of the bill.

A review of the history and justification for this nationally significant project should be helpful at this point.

The initial authorizing legislation was passed by Congress October 13, 1964, with the Senate voting the House-passed bill at my suggestion. The concept was for the State to receive some financial assistance in return for helping the Federal Government meet a goal recognized to be nationally desirable.

As noted, the Reserve comprises nine noncontiguous areas throughout Wisconsin, all containing unique remnants of the ice age which ended about 10,000 years ago. As has been pointed out by scientists, the moraines, eskers, kames, kettleholes, drumlins, swamps and lakes of this area present the best place in this country to study the glacial age and one of the two best places anywhere in the world. Also, this same area includes many spots which can provide valuable scenic and outdoor recreation opportunities for visitors not only from Wisconsin but from nearby Chicago, Minneapolis, and St. Paul and other areas of the Midwest. In this regard, it is worthwhile to note the recommendation of the recent first annual report of the President's Council on Environmental Quality that:

> Greater emphasis should be given through existing programs to acquire small parks and natural areas near cities.

Recognizing the unique national recreation and scientific values of this glaciated area the 1964 congressional act directed the Secretary of the Interior, in cooperation with the State of Wisconsin, to complete a comprehensive plan for the Reserve. Some $50,000 in Federal appropriations provided for the Federal portion of the plan. Section 4 of the act provided that the comprehensive plan should include such recommendations, if any, as the Secretary and the Governor of the State might wish to make with respect to Federal and State participation in the financing of appropriate interpretive and other public facilities and services within the Reserve.

The comprehensive plan was carefully negotiated between the National Park Service and the State of Wisconsin, and after full agreement, was filed with the Senate and the House on September 10, 1968.

In the 90th Congress, H.R. 18672 was introduced to carry out the comprehensive plan of September 10, 1968, in view of the fact that the recommendations included provisions requiring supplemental legislation. The bill received a favorable report from the Department of the Interior and the Bureau of the Budget in November 1968, but congressional adjournment prevented its enactment. H.R. 4172, introduced in this Congress, is identical to H.R. 18672.

While $750,000 was authorized in the 1964 act to be appropriated to help Wisconsin complete the acquisition of needed lands for the Reserve, it was understood that these funds would not be made specially available if Congress enacted the Land and Water Conservation Fund. The $750,000 was never funded, and all land acquisition moneys for the Ice Age Reserve have been derived from direct State appropriations and matching moneys allocated to it pursuant to the provisions of the Land and Water Conservation Fund.

The comprehensive plan provided for cost-sharing of the land acquisition, development and operation of the Reserve. Under this cost-sharing, Wisconsin would pay the entire cost of the land, 32,500 acres, with an estimated value of at least $16 million. The cost of additional land needed to complete the 32,500 acres is estimated at $1,150,000, all of which would be paid for by Wisconsin—50 percent through direct State appropriations, the other 50 percent to be earmarked from Wisconsin's allocation from the Land and Water Conservation Fund.

Wisconsin would pay 75 percent of the total cost of developing the nine units of the Reserve, $1,688,000. Twenty-five per-

cent will come from direct State appropriations, and 50 percent from Wisconsin's allocation of Land and Water Conservation Fund money. As provided in H.R. 4172, the 25 percent Federal contribution, not to exceed $425,000, would come from a Federal appropriation to the National Park Service.

The only other funding authorization contained in H.R. 4172 applies to operation and maintenance costs. Under the terms of the bill, Federal funds, if appropriated, may be used to match State funds made available for the administration of the Reserve. Based on current estimates, the Federal share is expected to be $79,000 annually.

The proposed ice age cost-sharing formula is like that of the Nez Perce National Historic Monument in Idaho, where the State operates the scattered sites on a 50–50 cost-sharing arrangement.

The cooperative features of the project are also similar to those of Independence National Historical Park in Philadelphia. There, the city of Philadelphia owns title to Independence Hall and the National Park Service pays all the expenses of maintenance and operations.

In summary, Mr. President, for a very modest Federal contribution, the Ice Age Reserve will provide a major return. Considering the contribution Wisconsin is making, the development and operation moneys provided from the Federal level in H.R. 4172 would seem a wise and worthwhile investment, and well justified as well because they would carry out the original intent of Congress in 1964 that these unique areas be preserved in the national interest.

The project has had the strong support of the Park Service and the Department of the Interior and of a previous Bureau of the Budget. The present Bureau of the Budget—Office of Budget and Management—objects on grounds based on principles it says are established by the Land and Water Conservation Fund. Yet, Congress authorized the ice age project even before the Land and Water Conservation Fund was established—and in fact, the concept of this hallmark Federal-State effort was a forerunner of the fund. Thus, it would be unfortunate if a project authorized 6 years ago by Congress were not carried through because of another program authorized later.

And, as noted, the Nez Perce National Historical Park and Independence National Historical Park have served as one important guide for development of the ice age concept.

Finally, it is important to point out that further delay in implementing the ice age plan could well result in land speculators acquiring enough acreage within the project to put an end to the viability of this priceless national resource as a public, underdeveloped facility.

To conclude, let me provide an area-by-area description of the Ice Age National Scientific Reserve as it will be implemented in the comprehensive plan of the Department of the Interior and the State of Wisconsin:

First. Two Creeks Buried Forest, on Lake Michigan 22 miles north of Manitowoc. This 30-acre site, which is privately owned, contains a buried spruce forest that was once covered by the waters of an ancient, much enlarged Lake Michigan before and after two periods of Wisconsin glaciation. Geologists consider this site as the standard for dating ancient artifacts by the carbon-14 method.

Second. Sheboygan Marsh, 15 miles west of the city of Sheboygan. A privately owned, 80-acre parcel next to the 6,503-acre Sheboygan Marsh County Park, it provides the best scenic overlook in the area, which includes what was once a vast glacial lake. Ultimately, the plan recommends that the whole park be included in the Reserve if Sheboygan County elects to take part in the program.

Third. A 15,000-acre segment of the north unit of Kettle Moraine State Forest, in Sheboygan County about 50 miles from Milwaukee. This area contains a ridge, or moraine, 200 feet high that was created by the nether edge of the vast moving wall of ice which swept down from the north, changing the face of a continent millions of years ago. A strange, humpy formation, dotted by eskers—serpentine-like ridges, usually about 60 feet high—kames—cone-shaped masses of gravel and rock—and kettle lakes—large depressions left by the glacier and filled with water—the Kettle Moraine is a living example of the gigantic force of the glacier.

Fourth. Campbellsport Drumlins, in Fond du Lac County about 9 miles west of Kettle Moraine State Forest. This 3,600-acre rural area contains some of the world's finest displays of "drumlins"—low, rounded hills, usually 50–100 feet in height and having the shape of an egg lying on its side and half buried in the earth. Much of this area is now farmland and would remain in private ownership, with a scenic easement to the public.

Fifth. Cross Plains, in Dane County about 6 miles west of Madison. A partially wooded, 160-acre segment, Cross Plains includes a terminal moraine deposited at the edge of an unglaciated area, bedrock formations, and a gorge.

Sixth. Devils Lake State Park in Sauk County, about 48 miles from Madison. Describing it as an "outstanding scenic and scientific area," the plan recommends that not only the 4,360-acre State park but also 4,480 acres of private land surrounding the park be included in the reserve. Nowhere in Wisconsin is the forceful drama of the glacier's advance more apparent than at Devils Lake. There the juggernaut of ice crushed around the ancient crystalline rampart of the Baraboo Range. Diverting the Wisconsin River from the gorge it had cut through the range, the ice dammed up both ends of the gap with debris. Devils Lake now fills the basin thus formed, according to the plan.

Seventh. Mill Bluff State Park in Monroe and Juneau Counties, 95 miles from Madison. This proposed 930-acre unit would include an existing 154-acre State park plus an adjacent group of rocky buttes on the north and south sides of the park. It provides a view of what was once a vast inland lake, and of rocky outcroppings that once were islands.

Eighth. A 2,940-acre segment near the town of Blommer in Chippewa County, about 35 miles from Eau Claire. This unit would include 1,000 acres of the Chippewa County Forest. It was here that the glacial advance piled up a miniature mountain landscape, a woodland of jumbled hills with more than 300 kettle-hole ponds and pools. In kettleholes that do not hold water there are bogs and groves whose undisturbed plant communities offer extraordinary possibilities for biological study, according to the plan.

Ninth. Interstate Park on the St. Croix River in Polk County, 55 miles from Minneapolis-St. Paul, Minn. This 920-acre parcel, all on the Wisconsin side of the river, includes an outstanding scenic river gorge, once a principal drainageway during the ice age; large potholes; lava flows; ground moraine; and rugged end moraines, according to the plan.

PROGRAM INFORMATION ACT

The Senate proceeded to consider the bill (S. 60) to create a catalog of Federal assistance programs, and for other purposes which had been reported from the Committee on Government Operations with an amendment to strike out all after the enacting clause and insert:

SHORT TILE

SECTION 1. This Act may be cited as the "Program Information Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) The term "Federal domestic assistance program" means any function of a Federal agency which provides assistance or benefits, whether in the U.S. or abroad, that can be requested or applied for by a State or States, territorial possession, county, city, other political subdivision, grouping, or instrumentality thereof, any domestic profit or nonprofit corporation, institution, or individual, other than an agency of the Federal Government.

(b) A Federal domestic assistance "program" may in practice be called a program, an activity, a service, a project or some other name regardless of whether it is identified as a separate program by statute or regulation. A "program" shall be identified in terms of differing legal authority, administering office, funding, financial outlays, purpose, benefits, and beneficiaries.

(c) "Assistance or benefits" includes but is not limited to grants, loans, loan guarantees, scholarships, mortgage loans and insurance or other types of financial assistance; assistance in the form of provision of Federal facilities, goods, or services, donation or provision of surplus real and personal property; technical assistance and counseling; statistical and other expert information; and service activities of regulatory agencies. "Assistance or benefits" does not include conventional public information services.

(d) "Requested or applied for" means that the potential applicant or beneficiary must initiate the process which will eventually result in the provision of assistance or benefits. The term, therefore, excludes solicited contracts, automatic shared revenues or payments, and indirect assistance or benefits resulting from Federal operations.

(e) "Federal agency" means any executive department, agency, or instrumentality of the Government and any wholly owned Government corporation.

(f) "Administering office" means the lowest subdivision of any Federal agency that has direct operational responsibility for managing a Federal domestic assistance program.

EXCLUSION

SEC. 3. This Act does not apply to any activities related to the collection or evaluation of national security information.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAMS

SEC. 4. The President shall transmit to Congress no later than May 1st of each regular session a catalog of Federal domestic assistance programs, referred tc in this Act as "the catalog," in accordance with this Act.

PURPOSE OF CATALOG

SEC. 5. The catalog shall be designed to assist the potential beneficiary identify all existing Federal domestic assistance programs wherever administered, and shall supply information for each program so that the potential beneficiary can determine whether particular assistance or support might be available to him to use for the purposes he wishes.

REQUIRED PROGRAM INFORMATION

SEC. 6. For each Federal domestic assistance program, the catalog shall—

(1) identify the program. The identification may include the name of the program, the authorizing statute, the specific administrating office, and a brief description of the program including the objectives it is designed to attain.

(2) describe the program structure. The description may include a statement of the eligibility restrictions, the available benefits, and the restrictions on the use of such benefits.

(3) provide financial information. This information may include the obligations incurred for past years, the range of financial assistance where appropriate, or other pertinent financial information designed to indicate the magnitude of the program and any funding remaining available.

(4) state the obligations on the part of the recipient receiving assistance or support. This statement may include a statement of prerequisites to receiving benefits, and of duties required after receiving benefits.

(5) identify the appropriate officials to contact. The list may include contacts both in Washington, District of Columbia, and locally, including addreses and telephone numbers.

(6) provide a general description of the application process. This description may include application deadlines, coordination requirements, processing time requirements, and other pertinent procedural explanations.

(7) identify closely related programs.

FORM OF CATALOG

SEC. 7. (a) The program information may be set forth in such form as the President may determine, and the catalog may include such other program information and data as in his opinion are necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal domestic assistance program.

(b) The catalog shall contain a detailed index designed to assist the potential beneficiary to identify all Federal domestic assistance programs related to a particular need.

(c) The catalog shall be in all respects concise, clear, understandable, and such that it can be easily understood by the potential beneficiary.

QUARTERLY REVISION

SEC. 8. The President shall revise the catalog at no less than quarterly intervals. The catalog shall be published in a manner which shall permit such revision to be made at the least possible cost, including the use of loose-leaf supplements or other materials as deemed necessary for such revision. Each revision—

(1) shall reflect any changes in the program information listed in section 6.

(2) shall further reflect addition, consolidation, reorganization, or cessation of Federal domestic assistance programs, and shall provide for such Federal domestic assistance programs the program information listed in section 6.

(3) shall include such other program information as will provide the most current information on changes in financial information, on changes in organizations administering the Federal domestic assistance programs, and on other changes of direct, immediate relevance to potential program beneficiaries as will most accurately reflect the full scope of Federal domestic assistance programs.

(4) may include such other program information and data as in the President's opinion are necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal domestic assistance program.

PUBLICATION AND DISTRIBUTION OF THE CATALOG

SEC. 9. (a) The President (or an official to whom such function is delegated pursuant to section 10 of this Act) shall prepare, publish, and maintain the catalog and shall make such catalog and revisions thereof available to the public at prices approximately equal to the cost in quantities adequate to meet public demands, providing for subscriptions to the catalog and revisions thereof in such manner as he may determine.

Gratis distribution of not to exceed ten thousand copies, in the aggregate, is authorized to Members of Congress and Resident Commissioners, Federal department and agency officials, State and local officials, and to local repositories as determined by the President or his delegated representative.

(b) The catalog shall be the single authoritative, Government-wide compendium of Federal domestic assistance program information produced by a Federal agency or department. Specialized catalogs for specific ad hoc purposes may be developed within the framework, or as a supplement to, the Government-wide compendium and shall be allowed only when specifically authorized and developed within guidelines and criteria to be determined by the President.

(c) Any existing provisions of law requiring the preparation or publication of such catalogs are superseded to the extent they may be in conflict with the provisions of this Act.

DELEGATION OF FUNCTIONS

SEC. 10. The President may delegate any function conferred upon him by this Act including preparation and distribution of the catalog, to the head of any Federal department or agency, with authority for redelegation as he may deem appropriate.

Mr. BOGGS. Mr. President, passage of S. 60, the Program Information Act, represents an important step toward more effective utilization of the $25 billion or so that is available yearly in Federal domestic assistance programs.

S. 60 would require annual publication of a catalog listing these Federal domestic assistance programs. Such a catalog will provide useful, up-to-date information on what programs are available, their authorizing statutes, the administration of the program, the nature of the program, those eligible for the funds available, as well as information on who to contact. There is also a requirement for identification of closely related programs, a cross-reference tool to enable any official of local government or private citizen to find the best program to meet his needs.

As a former Governor of Delaware, I know how essential it is that a State official and his staff have ready access to all the information that is available on Federal programs.

If such information assists a Governor, it will probably prove even more helpful to communities with a population of 5,000 or 10,000 persons. These smaller communities normally cannot afford executive guidance in seeking Federal assistance. A catalog of all available Federal domestic assistance programs would assure ready access for all Americans to the information they may need on the sewer programs or the training grants, or the farm assistance plans. This catalog, of course, also will list the many programs open to private individuals as well as to industry and other private organizations.

This legislation was originally proposed by the Honorable WILLIAM V. ROTH, the Member of the House of Representatives from Delaware. Startled by the maze of Federal programs he found when he was elected to the House, Congressman ROTH sought to catalog every program that he could find. In 1968, he prepared a listing of nearly 1,100 Federal assistance programs. He listed this information in the CONGRESSIONAL RECORD, and had it published as a House document.

Subsequently, Congressman ROTH compiled a second catalog. It proved to be even more comprehensive, listing more than 1,300 Federal programs. Congressman ROTH and his staff are to be commended for their diligent effort in the field.

As companion to legislation introduced in the House by Congressman ROTH, it was my honor to introduce S. 60 in the Senate. I was joined by several cosponsors: Mr. BENNETT, Mr. CASE, Mr. COTTON, Mr. GOODELL, Mr. JAVITS, Mr. KENNEDY, Mr. MATHIAS, Mr. MONTOYA, Mr. MURPHY, Mr. PERCY, Mr. SCOTT, Mr. STEVENS, Mr. TOWER, and Mr. WILLIAMS of Delaware.

Since it was originally submitted to the Senate, there have been several modifications to the bill. I support these amendments.

Possibly the most significant one changes the requirement in the original proposal for monthly updating of information to a requirement for quarterly updating. The Committee on Government Operations recognized that monthly updating was impractical, at least initially. Quarterly updating should serve to keep the catalog sufficiently current so that its data may be meaningful to its users. But I would anticipate that a time will come when the catalog can be updated monthly, thus making it even more effective for the public.

Again, Mr. President, I wish to express my strong support for this bill. It will create a tool that will be useful to all Americans. I commend this legislation to my colleagues.

The amendment was agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in

the RECORD an excerpt from the report (No. 91–1271), explaining the purposes of the measure.

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

PURPOSE

S. 60, the Program Information Act, is designed to remedy the basic difficulty facing grant applicants regarding the lack of information about what is available and what differences and similarities are among the many programs.

In order to overcome this problem, S. 60 would provide for the publication of a catalog of Federal assistance programs. The catalog would provide information designed to—

1. identify the program, its objectives, and authorizing statutes;

2. describe the program structure and eligibility requirements;

3. state the level of program funding and give other financial information;

4. state the cost to recipients and duties required of recipients;

5. identify the appropriate local and Washington officials to contact;

6. describe the mechanics of making an application; and

7. identify related programs.

S. 60 builds on the foundation established by the Intergovernmental Cooperation Act of 1968 (Public Law 90–577), and would provide a necessary additional tool to those at the State and local level of government who are grappling with the difficult assignment of achieving more effective delivery of Federal assistance programs.

BACKGROUND AND PROBLEMS

Between 1962 and 1966, the total of separate grant authorizations more than doubled, rising from 161 to 379. During the 90th Congress, at least 42 new broad grant programs were enacted involving well over that number of separate authorizations. A cautious estimate of the grant total places the figure at 420 as a minimum. When non-grant assistance programs are added to this figure, the total swells to in excess of 1,300 sources.

Grant-in-aid programs alone provide nearly 20 percent of State and local revenue. By their matching requirements, they generate additional expenditures on the order of one for every two Federal grant-in-aid dollars. In more recent years, the number, complexity, and varying administrative and personnel requirements have raised serious questions concerning their usefulness as tools of a properly functioning federal system. A major defect to arise has concerned the lack of information about what is available and what the differences and similarities are among the many programs.

During the course of the hearings held on S. 60 it became clear that for mere lack of information regarding the availability of domestic assistance programs, many units of government were unable to participate in the advantages for which the various programs were established. In addition, it was noted that such a publication as would be established by S. 60 could aid in eliminating overlapping programs and functions within various agencies as well as suggest the means by which program budgets might be reduced from time to time. The Bureau of the Budget initiated steps toward solution of the problem through issuance of Circular A–89, on August 23, 1968. The directive called for the preparation of a comprehensive catalog which would describe all Federal domestic assistance programs and activities. The catalog was to be issued on an annual basis for the executive branch of government, and was the responsibility of the Office of Economic Opportunity. At the same time, the circular stated that such a "* * * Catalog of Federal Domestic Assistance' * * * is not intended to be a substitute for agency publications which deal with the details of their own programs * * *." This "loophole in A–89" potentially could lead to the kind of catalog proliferation that has characterized Federal information efforts in this area during recent years.

HEARINGS

Hearings on S. 60, and related legislation, were held by the Senate Subcommittee on Intergovernmental Relations on September 9, 10, 12, and 17, 1969. More than 20 witnesses testified, including among others, Senator J. Caleb Boggs, Representative William V. Roth, Raymond P. Shafer, Governor of Pennsylvania, representing the National Governors' Conference; Frank N. Zullo, mayor of Norwalk, Conn., on behalf of the National League of Cities and the U.S. Conference of Mayors; Louis L. Goldstein, comptroller of the treasury for the State of Maryland; Farris Bryant, Chairman, Advisory Commission on Intergovernmental Relations, accompanied by William G. Colman, Executive Director and David B. Walker, Assistant Director; Dwight A. Ink, Assistant Director for Executive Management, Bureau of the Budget, accompanied by Walter W. Hasse, Director of Management and Information Systems Staff, Howard Schnoor, Director of Government Organization Staff of the Office of Executive Management, William Armstrong, Director of Financial Management Staff, Office of Executive Management, and James R. Elder, Management Analyst, Management Information Systems Staff.

Also Elmer Staats, Comptroller General of the United States; W. Russell Arrington, Illinois State Senate president pro tempore; William S. James, president of the Maryland State Senate, on behalf of the Council of State Governments, accompanied by Arlene T. Shadoan and Robert M. Rhodes, special assistants: on behalf of the National Association of Counties, Clifford Tuck, president-director, Department of Coordination, Shelby County, Tenn., Lois Blume, Nassau County, New York Federal State Aid Coordinator, Thomas Haga, director, Metropolitan Planning Commission, Genesee County, Mich., Aileen Lotz, senior administrative assistant of Dade County, Fla., accompanied by Ralph L. Tabor, director of Federal Affairs for the National Association of Counties; and Wayne F. McGown, president, National Association of State Budget Officers, accompanied by Dick Seaman, Wisconsin Department of Administration at Madison (Arlene T. Shadoan, Council of State Governments, Washington, D.C.).

In addition, statements on S. 60 were received from the following governmental agencies: Advisory Commission on Intergovernmental Relations, Agriculture, Army, Atomic Energy Commission, Bureau of the Budget, Civil Aeronautics Board, Coastal Plains Regional Commission, Commerce, Council of Economic Advisers, District of Columbia, General Accounting Office, General Services Administration, Housing and Urban Development, Interior, National Aeronautics and Space Administration, National Science Foundation, Post Office, Small Business Administration, State, Tennessee Valley Authority, Treasury, and Upper Great Lakes Regional Commission.

In introducing the bill, Senator J. Caleb Boggs said:

"In recent years the proliferation of Federal assistance programs has become a source of irritation for those who seek a particular program to fulfill specific needs. The tangle has resulted in many man-hours being wasted in ferreting out programs tailored to the needs of an individual.

"The absence of a reliable cross-referenced source of information for all Federal programs has also undoubtedly caused an overlapping of Federal programs, adding needless cost to the considerable confusion."

The testimony and statements of the witnesses dealt with these issues and was overwhelmingly in support of the objectives of the legislation. The suggestions for additions, changes, and improvements in the legislation were thoroughly considered by the committee.

COMMITTEE ACTION AND AMENDMENTS

In its deliberations on the bill, the committee considered a number of policy questions including differences between the provisions of S. 60 as introduced, and issues raised in the testimony and statements of witnesses.

The principal changes made by the amendment, section by section, are as follows:

EXTENT OF COVERAGE

Section 2, as introduced, provided for coverage of all "Federal assistance programs." As amended, section 2 applies to "Federal domestic assistance programs" inasmuch as the option of compiling a similar or integrated catalog on foreign assistance programs is available at a later date.

Section 2, as amended, narrows the definition of a "Federal domestic program" since many programs are multipurpose, provide more than one type of benefit, and are funded from multiple sources. The committee felt that the definition prescribed in section 2, as introduced, would result in unnecessary fragmentation of the catalog and undue complication of the task of assembling necessary information. The suggested definition is related to the "function" of providing assistance or benefits, thus permitting a program to be called an activity, a service, a project, or some other name regardless of whether it is identified as a separate program by statute or regulation. This would permit identification in terms of legal authority, administering office, funding, fiscal outlays, purpose, benefits, and beneficiaries.

PUBLICATION OF THE CATALOG

Section 4, as introduced, provided the catalog be transmitted during the early days of each session of the Congress. As amended section 4 provides for such transmittal to Congress no later than May 1 of each regular session. The selection of this specific date would permit the Bureau of the Budget to complete preparation of the annual budget and to relate the catalog's content as nearly as possible, to the new fiscal year programs.

DESIRABLE FISCAL INFORMATION

As introduced, sections 6(3) and 7(a) required that information be provided beyond the capacity of existing information systems. As amended, section 6(3) provides that information regarding obligations incurred for past years be included, along with an indication concerning the general range of fiscal assistance currently available. Detailed budgetary information has been eliminated.

PROCEDURAL SIMPLIFICATION

Section 8, as introduced, provided simplification of application procedures being implemented through the provisions of Public Law 90–577 and executive order. Accordingly, the committee recommended that the provisions of section 8 be eliminated as unnecessary conditions to the proposed legislation.

PERIODICITY OF THE CATALOG

As introduced, section 9 provided for monthly revisions of the catalog. As amended, section 9 is changed to a new section 8, and provides for quarterly revision based upon the limitations of current available information, and in view of the option that more frequent revisions may be possible as the information system is perfected.

New Section 8 was further amended to require that the quarterly revision be published in a manner which shall be at the least possible cost, including the use of loose-leaf

supplements or other materials as deemed necessary for the revision. This was done to assure that there would be no republication of the entire catalog, or parts thereof not relevant to the revision.

SPECIALIZED CATALOGS

Section 9, as introduced, provided that the catalog authorized by the legislation, would be the only compendium of program information produced by any Federal agency or department. As amended, S. 60 provides that the assembly of specialized catalogs for specific purposes of target groups be authorized, but within the framework of, or as a supplement to, the Government-wide compendium authorized by the legislation. Specific guidelines and criteria would be established to cover such circumstances.

DELEGATION OF AUTHORITY

As introduced, section 10 provided that the activity of compilation and production be the responsibility of the Bureau of the Budget. As amended, the measure provides that the President may delegate this function to the agency or agencies believed most appropriate for execution of the function, thus permitting him an added degree of flexibility of judgment.

CONCLUSIONS

The major objective of this bill is to provide in one reliable publication, an overview of all sources of Federal domestic assistance divided into visible, discrete program entities. The catalog should give the potential applicant or beneficiary a general overview of all domestic programs that might bear on his needs, should permit him to evaluate and make a preliminary choice of which of these programs are the most appropriate to pursue, and should give him the best contacts needed for further inquiry.

To help Congress in its function of legislative planning, the catalog should list all programs, including those not funded at present.

It is expected that simple and uncomplicated methods for preparing such a catalog of program information will be devised. Furthermore, to help the Congress in its function of legislative planning, the agency/agencies responsible for initial preparation of the catalog should give close attention to the expressed needs of complete and current program information.

EXEMPTION FROM ATTACHMENT OF WAGES FOR NONRESIDENTS OF THE DISTRICT OF COLUMBIA

The bill (H.R. 9548) to amend section 15–503 of the District of Columbia Code with respect to exemptions from attachment and certain other process in the case of persons not residing in the District of Columbia was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1273), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill (H.R. 9548) is to eliminate a practice involving the attachment of wages of nonresident debtors through actions initiated in the District of Columbia courts. In this way, creditors, by suing in the District, have been able to evade an exemption that may be granted to a nonresident debtor by the laws of the State in which the debtor resides.

NEED FOR LEGISLATION

Under existing law in the District of Columbia it is possible for a creditor to garnish the wages of a nonresident debtor by initiating garnishment proceedings in the District of Columbia against the debtor's employer, if the employer maintains an office in the District, even though the employer's principal place of business is outside the District. For example, under Maryland law, an employee earning $100 a week, or $433 a month, is exempt from garnishment. In the District, however, under the same circumstances, $66.60 of the employee's wages would be subject to garnishment.

MAJOR PROVISIONS OF THE BILL

The bill (H.R. 9548) amends section 15–503 of the District of Columbia Code to insert therein a new subsection (c) which would, in certain cases, exempt from attachment the wages of a nonresident of the District of Columbia who earns the major part of his wages outside the District, to the same extent such wages would be exempt under the laws of the State in which the debtor resides. The exemption applies only in cases involving a contract or transaction entered into outside the District of Columbia.

In addition, the amendment provides that in any case in which claim is made for such exemption the burden shall be upon the plaintiff to prove that the contract or transaction involved in the case was entered into within the District of Columbia.

HISTORY OF THE LEGISLATION

The bill (H.R. 9548) passed the House on July 14, 1969, and was subsequently referred to the Senate District Committee. A hearing on the bill was held before the Judiciary Subcommittee on July 27, 1970, at which time a representative of the District of Columbia Office of the Corporation Counsel presented testimony favoring the enactment of the legislation. No opposition to the bill was presented to the committee.

ELIMINATION OF STRAW PARTY DEEDS IN JOINT TENANCIES

The Senate proceeded to consider the bill (H.R. 13564) to provide that in the District of Columbia one or more grantors in a conveyance creating an estate in joint tenancy or tenancy by the entireties may also be one of the grantees which have been reported from the Committee on the District of Columbia with amendments on page 2, after line 2, insert a new section, as follows:

SEC. 2. (a) Title II of the District of Columbia Code, as amended by section 111 of the Act of July 29, 1970 (84 Stat. 475), is amended as follows:

(1) Section 11–921(a)(3)(A)(ix) of such title is amended by striking out "sec. 1–804(b)" and inserting in lieu thereof "sec. 1–804b".

(2) Section 11–1101(8) of such title is amended by striking out "subsection" and inserting in lieu thereof "section".

(3) Section 11–1106(16) of such title is amended by striking out "VII" and inserting in lieu thereof "IV".

(4) Section 11–1501(b)(4) of such title is amended by inserting immediately after "Fairfax Counties" the following: "(and any cities within the outer boundaries thereof)".

(5) Section 11–1561(5) of such title is amended by striking out "has either (A)" and inserting in lieu thereof "either (A) has".

(6) Section 11–1561(6) of such title is amended by striking out "has either (A)" and inserting in lieu thereof "either (A) has".

(7) Section 11–1742(a) of such title is amended by striking out "may be assigned" and inserting in lieu thereof "may be assigned".

(b)(1) Section 601 of the Act of July 29, 1970 (84 Stat. 667), is amended by striking out "IX" and inserting in lieu thereof "X".

(2) It is the intent of Congress that the amendment made by paragraph (1) of this subsection shall (A) revive title IX of the Act of December 27, 1967 (81 Stat. 742), as of the date of enactment of this Act, and (B) repeal title X of such Act of December 27, 1967 (81 Stat. 742), as of the date of enactment of this Act.

(c) Title 23 of the District of Columbia Code, as enacted by section 210(a) of the Act of July 29, 1970 (84 Stat. 604), is amended as follows:

(1) The heading of section 23–551 of such title is amended by striking out "supression" and inserting in lieu thereof "suppression".

(2) Section 23–551(b)(5) of such title is amended by striking out "subsection (i) of this section" and inserting in lieu thereof "section 23–549(a)".

(d) The amendments made by subsections (a) and (c) of this section shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of the Act of July 29, 1970 (84 Stat. 473).

On page 3, after line 22, insert a new section, as follows:

SEC. 3. That part of the schedule of rates contained in section 101 of the District of Columbia Police and Firemen's Salary Act of 1958, as amended (D.C. Code, sec. 4–823), relating to salary class 11 is amended to read as follows:

"Salary class and title	Service step 1	2	3	Longevity step 4	5	6	A	B	C
Class 11	29,925	31,350	32,775						
Fire Chief Chief of Police."									

And on page 4, following the table after line 2, insert a new section, as follows:

SEC. 4. The amendments made by the third section of this Act shall take effect on the first day of the first pay period beginning on or after July 1, 1969.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1272), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill (H.R. 13564) is to eliminate the common law requirement, which is presently applicable in the District of Columbia, that creation of a joint tenancy in real property by act of one of the parties thereto, must be accomplished through a third, or so-called straw, party.

NEED FOR LEGISLATION

The Code of the District of Columbia does not codify the requirements for the creation of joint tenancies in real property; consequently, the common law applies in such conveyances involving real property located in the District. A joint tenancy in real property is one in which the owners hold undivided interests which pass to the surviving tenants. A tenancy by the entireties is a joint tenancy between husband and wife.

Under the common law, a basic requirement of joint tenancy is that the interests of the grantees must arise at the same time, and by the same grant. This precludes an owner of real property from directly creating a joint interest therein between himself and another. It is necessary under the common law to convey such a joint tenancy through a third party. For example, a man wishing to give his wife such an interest in property owned by himself individually must first deed the property to another person, referred to as a straw party, who in turn deeds it back to the husband and wife.

The bill makes unnecessary the use of a straw party to effect this property transaction, and will result in a saving of money and in greater convenience to those persons who wish to create joint tenancies and tenancies by the entireties in property which they own.

HISTORY OF LEGISLATION

The bill (H.R. 13564) passed the House on October 27, 1969, and was subsequently referred to the Senate District Committee. A hearing on the bill was held on April 28, 1970, before the Judiciary Subcommittee, at which time a representative of the office of the District of Columbia Corporation Counsel presented testimony favoring the legislation. Your committee has also received endorsements of this legislation from the District of Columbia Bar Association and the District of Columbia Metropolitan Area Land Title Association. No opposition to this bill has been presented to your committee.

PROVISIONS OF THE BILL

The bill (H.R. 13564) amends the act of March 3, 1901 (D.C. Code sec. 45–816) to provide by statute that a joint tenancy in real property, or a tenancy by the entireties, may be created by an owners' directly conveying title to himself and another (or others).

The bill also amends the heading of this section so that it properly indicates that tenancy by the entireties is also treated in the section.

COMMITTEE AMENDMENTS

The committee amendments contained in section 2 of the bill are technical amendments correcting errors in numeration, spelling and type in the District of Columbia Court Reorganization Act (act of July 29, 1970; 84 Stat. 473). Only one of these amendments has substantive impact. Section 601 of the act intended to repeal title X of Public Law 90–226, authorizing a Commission on Revision of the Criminal Laws of the District of Columbia. By inadvertence, however, the act improperly cited title IX instead of title X, which resulted in the possible apparent repeal of provisions dealing with public disturbances. Although the context of the repealer clearly reflects the intent to abolish the Commission on Revision of Criminal Laws (and could not be read to affect the substantive criminal law provisions), the typographical error should be changed in order to avoid any misunderstanding by the codifiers of the provision.

The committee amendments in sections 3 and 4 of the bill relate to the District of Columbia police, firefighter, and teacher pay increase enacted this summer. That legislation inadvertently included a pay scale for assistant chiefs of the police and the fire department which has resulted in a pay level for some of the present assistants $1,250 in excess of the pay rate for the chiefs. Because the bill was retroactive to July 1969, some assistant chiefs received an additional $1,250 in excess of that received by the chiefs. This result occurs, because, under the bill, the fourth and last pay step for the assistant chief in each department is $1,250 per year higher than the first step for chief.

The present chiefs of fire and police are in the first step whereas some of their assistants are in the fourth.

The proposed amendment remedies this situation by eliminating the first step from the present chiefs pay schedule, thus reducing the number of steps for a chief to three, the lowest of which is higher than the highest step for assistant chief. The amendment will make this pay scale for chiefs retroactive to last July 1, so that the two chiefs will receive additional compensation as if the error had not occurred in the first place.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection (4) of rule XXIX of the Standing Rules of the Senate to expedite the business of the Senate.

Mr. MANSFIELD. Mr. President, that completes the call of the calendar.

PROGRAM FOR REMAINDER OF THE SESSION

Mr. MANSFIELD. If the distinguished Senator from New York (Mr. JAVITS) will forbear a little bit further so that the joint leadership can state what the program will be for the period of time between now and next Wednesday, October 14, 1970, and when we come back, I would like to proceed.

Mr. JAVITS. I am happy to yield further to the Senator from Montana.

Mr. MANSFIELD. I thank the Senator from New York.

Mr. President, yesterday it was announced that the Congress would adjourn next Wednesday, October 14, and return following the elections on November 16, to complete the business. Prior to the adjournment, I announced that the Senate would complete action on a number of very important items and would again wish to list them in the approximate order in which they will be considered.

The equal rights for women proposal is presently the Senate's unfinished business. It will be considered until disposed of. While women's rights is pending, the leadership intends to move it aside temporarily from time to time to consider other matters. The drug bill presently falls in that category. Later today, the leadership intends to set aside again the women's rights proposal temporarily to return to the consideration and to complete action on the drug measure.

Before the Senate adjourns this evening, the leadership intends to set aside again the women's rights proposal for the purpose of considering the four crime measures that are now on the calendar. If not completed this evening, the Senate will finish action on all of these bills tomorrow and again return to consideration of the women's rights proposal on a larger scale.

Tomorrow evening, the Senate will consider the Sleeping Bear Dunes proposal and will complete its consideration—that is, if it is not taken up and disposed of this evening. Tomorrow also it is hoped that the Senate could turn to the occupational health and safety measure.

On Friday, the Senate will return to the consideration of the equal rights proposal provided that action has not been completed on Thursday. Hopefully, too, the Senate will continue consideration of the occupational health and safety measure with a possibility for action to be completed on Friday, if not, it will go over until Monday. Thereafter, next week, it is hoped that the Senate will consider military construction appropriations, the World Environmental Institute, and the remaining available items of importance on the Calendar of business, as well as conference reports as they become available.

Upon the Senate's return on November 16, it will be the intention of the leadership, at this time and barring some unforeseen factor, to commence action on the Social Security Amendments for 1970. That measure may well be made the unfinished business of the Senate before the election recess begins so that Senators will be on notice.

The leadership has prepared a list of major bills to be completed before the Senate adjourns sine die including such items as the President's family assistance proposal, the remaining appropriations bills, and the consumer class action bill, and I ask unanimous consent that the complete list of these measures be printed at this point in the RECORD.

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

Social security amendments.
The consumer class action bill, S. 3201.
Family assistance proposal.
Consumer Protection Agency.
Rivers and harbors improvements.
Broker-dealer insurance bill.
Foreign assistance appropriations.
Independent offices appropriations.
Defense Department appropriations.
Supplemental appropriations.
Transportation appropriations.
Labor-HEW appropriations.

Mr. MANSFIELD. Mr. President, of course, these items are not necessarily listed in the order in which they will be considered. Also, all items that are now in conference or that are Senate-passed bills awaiting House action are privileged matters and will also be considered as they are received in the Senate.

Mr. SCOTT. Mr. President, if the distinguished majority leader would yield, I thank him for his statement and for the information that it is helpful for all Senators to have.

I would certainly agree that the social security measure is a matter of utmost importance and must be disposed of before this Congress adjourns sine die.

Many people in this country suffer if we do not work out what is a just and fair addition to our social security legislation. I am, of course, very much in favor of our doing just that.

Therefore, before we recess to the extra or agony session of the Congress, I would hope that we could make the pending order of business the social security bill so that all Senators, wherever they may be, will be on notice that it is essential to return promptly in order that a

quorum may be quickly established and the work of Congress be finished.

Mr. MANSFIELD. Mr. President, if the distinguished minority leader will yield, it is, of course, hoped by the joint leadership that the equal rights constitutional amendment will be disposed of before we go out on Wednesday next, and hopefully disposed of as it now stands.

Mr. SCOTT. Mr. President, as I have pointed out to the distinguished majority leader, we pay many tributes to courage in this Chamber. I would not want to have to withdraw any of those tributes because the angered ladies in the country might feel that we had failed to act upon this constitutional amendment.

I am sure we are all for equal rights, and we all want to see that equal rights are afforded and to establish the depth of our concern and the integrity of our conviction. This can be done by the completion of our commitment, at which point it becomes infinitely safer to leave these hallowed halls and walk among one-half of the people of this country.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair recognizes the Senator from New York.

Mr. JAVITS. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. Fifteen minutes.

NOMINATION OF SIDNEY P. MARLAND, JR., AS U.S. COMMISSIONER OF EDUCATION

Mr. JAVITS. Mr. President, the nomination of Sidney P. Marland, Jr., as U.S. Commissioner of Education has elicited a great deal of favorable comment and support from the education community, the community which has had an opportunity to observe him during his career as educator and administrator. New York Times which is appended recently pointed out, Dr. Marland "has the administrative skills and toughness the Office of Education needs," and the Times said he would bring to his post "the pragmatism of an insider who knows the politics of the education establishment; but his record also clearly marks him as an innovative administrator who is not the prisoner of the status quo."

I have received a number of communications also, in support of the Marland nomination. These include letters from two former Commissioners of Education, Hon. Sam Brownell, who served under President Eisenhower, and Hon. Francis Keppel, who served under Presidents Kennedy and Johnson, communications from major national organizations—the million-member National Education Association, the American Council on Education which represents the broadest spectrum of the higher education community, the National School Board Association, the National Catholic Educational Association, the American Association of School Administrators, the Association of American Universities and the American Association of State Colleges and Universities.

I have also heard from two distinguished educators from my own State of New York, New York State Commissioner of Education Ewald B. Nyquist and Dr. Joseph Manch, president, council of the Great City Schools and superintendent of the Buffalo Public Schools for the offended letters.

Finally, I received a communication of support from Louis J. Kishkunas, superintendent of the Pittsburgh public schools, where Dr. Marland had previously served with distinction.

I ask unanimous consent that these communications, and the New York Times editorial of September 26, "Sound Choice for Education," be printed at this point in my remarks.

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

YALE UNIVERSITY,
New Haven, Conn., September 23, 1970.

Hon. JACOB K. JAVITS,
Member, Senate Committee on Labor and Public Welfare, Senate Office Building, Washington, D.C.

DEAR SENATOR JAVITS: This letter is in support of the nomination of Sidney Marland for U.S. Commissioner of Education, and an expression of hope that your Committee will help to bring about speedy confirmation.

I was Commissioner of Education 1953–56, and have kept closely associated with the great expansion in Office of Education responsibilities since that time. The need for able leadership under a "confirmed" Commissioner is great.

I have known and worked with Sidney Marland in varied educational activities since he became school superintendent in Darien, Connecticut upon his return from military service in the 1940's. He is an able educator and administrator. His record of vigorous, competent and forward looking educational administration and his educational writings attest to his understanding of problems facing education in the United States and his ability to organize and direct operations which enable progress to be made in moving education ahead.

The personal integrity and vigor which Dr. Marland has exhibited in his career are important assets beyond his educational competence.

I urge that your Committee support the nomination of Dr. Sidney Marland for U.S. Commissioner of Education and assist in speedy confirmation by the U.S. Senate.

Respectfully,

S. M. BROWNELL,
Consultant in Urban Education.

NEW YORK, N.Y.,
September 23, 1970.

SENATOR JACOB K. JAVITS,
Old Senate Building,
Washington, D.C.

DEAR SENATOR JAVITS: I was delighted to hear that the President had nominated Sidney Marland as United States Commissioner of Education. I have known him for twenty years and have done a good deal of work with him in that time. He has good judgment and has shown an ability to innovate as well as to manage. As is true, I suppose, of any man who has been a leader, he has probably built up a group of critics as well as a group of admirers. I enlist myself among the latter, and I therefore hope you will give speedy consent to the President's excellent nomination.

From what I can hear of the affairs of the Office of Education from this distance, it would be very desirable if Mr. Marland could get on the job just as soon as possible, and I therefore hope that you and your colleagues will be able to consider his appointment at the earliest possible date.

With best personal regards,

Sincerely yours,

FRANCIS KEPPEL.

NATIONAL EDUCATION ASSOCIATION,
Washington, D.C., September 24, 1970.

Hon. JACOB K. JAVITS
Committee on Labor and Public Welfare, New Senate Office Building, Washington, D.C.

DEAR SENATOR JAVITS: I am writing to advise you that the National Education Association, representing more than one million professional educators, supports the President's nomination of Dr. Sidney P. Marland for the post of U.S. Commissioner of Education.

We believe that Dr. Marland's experience and philosophy qualify him highly for this important post. He will be an effective and knowledgeable spokesman within the executive branch for the pressing needs and problems of education.

For your information and review, I am enclosing a copy of the NEA's statement on Dr. Marland.

We urge your prompt favorable consideration of this nomination so that Dr. Marland can take up the crucial duties of the position which has already been too long vacant.

Sincerely,

JOHN M. LUMLEY,
Assistant Executive Secretary, Government Relations and Citizenship

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NEA EXECUTIVE COMMITTEE ENDORSES DR. MARLAND FOR U.S. COMMISSIONER OF EDUCATION POST

WASHINGTON, D.C., September 23.—The Executive Committee of the National Education Association, which represents the vast majority of the nation's teachers, today unanimously endorsed the nomination of Sidney P. Marland Jr. as new U.S. Commissioner of Education.

After the committee met with Health, Education, and Welfare Secretary Elliot L. Richardson and Dr. Marland for several hours at NEA Headquarters this morning, Mrs. Helen Bain, NEA president, stated that the association "found Dr. Marland's philosophy and plans for action consistent with NEA goals."

The five NEA priorities as established by the association's Representative Assembly are: bargaining rights for teachers, broad federal financial support for education, student and community involvement, the right of teachers to control the teaching profession (professional autonomy), and human relations.

Marland's nomination was announced yesterday by President Nixon. If confirmed by the Senate, he will take the Office of Education post vacated about three months ago on the resignation of James E. Allen Jr. Another post that Allen held concurrently—HEW assistant secretary for education—remains vacant.

WASHINGTON, D.C.,
September 23, 1970.

Hon. JACOB JAVITS,
Washington, D.C.:

On the basis of Dr. Sidney Marland's experience and leadership, the higher education community supports his nomination to be Commissioner of Education. We hope and respectfully urge that this nomination receive speedy confirmation.

LOGAN WILSON,
President, American Council on Education.

STATEMENT BY HELEN P. BAIN, PRESIDENT OF THE NATIONAL EDUCATION ASSOCIATION, IN CONNECTION WITH THE NOMINTION OF DR. SIDNEY P. MARLAND, JR., AS U.S. COMMISSIONER OF EDUCATION

The Executive Committee of the National Education Association, which represents the vast majority of the nation's teachers, conferred this morning for several hours at NEA headquarters with HEW Secretary Elliot L. Richardson and Dr. Sidney P. Marland, Jr. over the latter's appointment by President Nixon to the post of U.S. Commissioner of Education.

Following an extensive discussion with Mr. Richardson and Dr. Marland over five major priorities of the NEA, the Executive Committee found Dr. Marland's philosophy and plans for action consistent with NEA goals and therefore unanimously endorsed his nomination.

The five NEA priorities as established by the NEA's Representative Assembly, the Association's policy-making body, are: bargaining rights for teachers, broad federal financial support for education, student and community involvement, the right of teachers to control the teaching profession (professional autonomy), and human relations.

EVANSTON, ILL.,
September 22, 1970.

Hon. JACOB K. JAVITS,
Senate Office Building,
Washington, D.C.:

The National School Boards Association is extremely pleased that you have taken action today to fill the position of U.S. Commissioner of Education.

The office of U.S. Commissioner of Education is an extremely important one which should not remain vacant. The problems confronting education today are so diverse and complicated that if solutions are to be found we need national leadership—leadership to work on problems of school desegregation, the education of the disadvantaged, inadequate financial support of education, and many others. We applaud your action in providing the education community with a leader of Dr. Sidney Marland's caliber and we urge the U.S. Senate to take prompt action on his confirmation.

Dr. GEORGE E. EWAN,
President, National School Boards Association.

STATEMENT OF THE NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION

WASHINGTON, D.C.—The nomination of Sidney P. Marland to be U.S. Commissioner of Education has been endorsed by the President of the National Catholic Educational Association, the nation's largest professional organization of Catholic educators.

Rev. C. Albert Koob, NCEA President, specifically cited Dr. Marland's "concern for the problems of all education, private as well as public," in announcing NCEA's approval of the nomination.

Praising Dr. Marland's "training, experience, dedication, and integrity," Father Koob said that the Education Office nominee "has long displayed exceptional qualities of leadership and educational statesmanship."

Dr. Marland is President of the Institute for Educational Development, a New York firm specializing in educational research and consulting. He earlier was Public School Superintendent in Pittsburgh and in other locations.

He is one of several prominent citizens serving as Sponsors of NCEA's Educational Service and Expansion Program.

President Nixon proposed Dr. Marland for the Education post to succeed Dr. James E. Allen, Jr., who left the office in June. The Marland nomination is now being considered by the Senate Labor and Welfare Committee.

Text of Father Koob's statement:

"I endorse and applaud the nomination of Sidney P. Marland to the office of U.S. Commissioner of Education. The problems of education today demand that a person of Dr. Marland's training, experience, dedication and integrity be promptly installed in this highly essential and sensitive position.

"Dr. Marland has long displayed exceptional qualities of leadership and educational statesmanship. His concern for the problems of all education, private as well as public, make him ideally suited for the role of Commissioner."

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CAMBRIDGE, MASS., *Sept. 23, 1970.*

Hon. JACOB JAVITS,
Old Senate Office Building,
Washington, D.C.:

I am authorized by the executive committee of the association of American universities a group of 46 major public and private institutions in all parts of the Nation to express the associations support of Sidney Marland as Secretary Richardson choice as Commissioner of Education. It is important that the office be filled quickly and we trust that the Senate will ratify the nomination soon.

NATHAN M. PUSEY,
President,
Association of American Universities.

AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES,
September 22, 1970.

Hon. JACOB K. JAVITS,
U.S. Senate, Old Senate Office Building,
Washington, D.C.

DEAR SENATOR JAVITS: Enclosed is a copy of a telegram which the Association sent today to President Nixon in support of his nomination of Sidney Marland to be Commissioner of Education. We hope the Committee will take prompt action.

Sincerely,

ALLAN W. OSTAR,
Executive Director.

SEPTEMBER 22, 1970.

RICHARD M. NIXON,
The White House,
Washington, D.C.:

On behalf of the American Association of State Colleges and Universities, as organization of 275 institutions in 46 states, the District of Columbia, Guam, and the Virgin Islands which enroll 25 per cent of all college students, we want to commend you on your nomination of Dr. Sidney Marland to be Commissioner of Education. You may be assured that Dr. Marland will have our fullest cooperation and support in his efforts to deal with the critical educational problems facing our nation.

HILTON C. BULEY,
President, American Association of State Colleges and Universities, and President of Southern Connecticut State College.

ALLEN W. OSTAR,
Executive Director, American Association of State Colleges and Universities.

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS,
September 22, 1970.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: We have today wired President Nixon as follows:

The American Association of School Administrators is indeed pleased with your appointment of Dr. Sidney P. Marland, Jr. as United States Commissioner of Education. We believe that Dr. Marland will bring to this assignment a unique style of leadership that will launch the Office of Education into a new and exciting era of progress and accomplishment. Familiar with the smell of chalk dust and buttressed by the knowledge and experience he gained while providing exemplary leadership to school districts, Dr. Marland is admirably equipped to be the nation's chief educational spokesman. We pledge our support and cooperation to the new United States Commissioner of Education and the important office which he will head.

We urge strongly that prompt action be taken by the Senate Committee on Labor and Public Welfare on the confirmation of Dr. Marland's appointment. The office of United States Commissioner has now been vacant since June 10. Simple logic and the genuine concern which we share for the welfare of the schools of this country would dictate that this condition should not persist. We, therefore, sincerely solicit your cooperation as a member of this Committee in securing prompt action on Dr. Marland's appointment.

Sincerely,

FORREST E. CONNER,
Executive Secretary.

NYS EDUCATION DEPARTMENT,
September 25, 1970.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.:

I am delighted that the President has moved to fill the position of U.S. Commissioner of Education.

Mr. Marland has been a superintendent of schools of a major urban center. The plight of education in our urban centers is a most pressing problem now and will continue to be for a period of time in the future. Mr. Marland's experience with these problems gives him a basis for exercising sound judgment on establishing the federal role in this area.

I would, in addition, support the position that Secretary Richardson should have working with him those men whose judgment he trusts and has confidence in.

I favor the nomination of Mr. Marland to this position.

I hope the Senate might work with all due speed to confirm this nomination.

EWALD B. NYQUIST,
NYS Commissioner of Education.

WASHINGTON, D.C.,
September 23, 1970.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.:

Boards of education and superintendents of schools in 21 great city school systems strongly endorse President's nomination of Dr. Sidney Marland, Jr., as U.S. commissioner of education. His understanding of problems of urban education urgently needed in office of education. His demonstrated leadership urgently needed in American education community. We urge your prompt and favorable consideration of this nomination.

DR. JOSEPH MANCH,
President Council of the Great City Schools, Superintendent Buffalo Public Schools.

PITTSBURGH, PENN.,
September 26, 1970.

Senator JACOB JAVITS,
U.S. Senate,
Washington, D.C.:

Strongly urge that you support confirmation of Doctor Sidney P. Marland, Jr., as Commissioner of Education. His urban and suburban school experience make him ideally suited for that position.

LOUIS J. KISHKUNAS,
Superintendent,
Pittsburgh Public Schools.

SOUND CHOICE FOR EDUCATION

Sidney P. Marland Jr., who has been nominated by President Nixon to be United States Commissioner of education, has the administrative skill and toughness the Office of Education needs.

Dr. Marland brings to his post the pragmatism of an insider who knows the politics of the education establishment; but his record also clearly marks him as an innovative administrator who is not the prisoner of the status quo. He is steeped in the urban school scene and, in Pittsburgh, has evolved sound programs to deal with the inner-city crisis.

Opposition to his appointment has been voiced openly by the A.F.L.-C.I.O. and its affiliate, the American Federation of Teachers, and in a more subtle, behind-the-scenes manner by Southern segregationists. Labor's objections spring from Dr. Marland's role as the official antagonist to union demands for the Pittsburgh teachers' right to collective bargaining—a position, he insists, he had to take under existing state laws. There is little merit in arguing that case now, particularly since issues of teachers' union prerogatives are not likely to come up in any of the commissioner's functions.

A confirmation battle along such lines could only have one effect—to tear the education constituency apart and, in the wake of such disunity, weaken public support. Dr. Marland's qualifications admirably suit the needs of the moment.

NEW SCHOOLBUS SAFETY EFFORTS

Mr. JAVITS. Mr. President, perhaps the most controversial political question in education today involves busing. Yet, there is one aspect of busing on which all agree—the necessity of providing safe transportation for some 18 million of our children who travel about 2 billion miles each year on the Nation's 200,000 schoolbuses.

For some time, I have been working on the problem of safety of schoolbuses. Heretofore, I authored an amendment to the Elementary and Secondary Education Act which resulted in a study on schoolbus safety under the auspices of the Department of Health, Education, and Welfare and Transportation. Most recently, I wrote Secretary of Transportation John Volpe expressing my concern and raising a number of specific questions. I ask unanimous consent that Secretary Volpe's reply and my letter be included as part of my remarks. The Secretary points out a number of constructive steps now being undertaken. I am certain that the Senate wishes to know about this and many of us will be watching these developments with interest, for the Nation's schoolbuses daily transport our most precious cargo—our future.

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

AUGUST 3, 1970.

Hon. JOHN A. VOLPE,
The Secretary,
Department of Transportation,
Washington, D.C.

DEAR JOHN: Reference is made to our recent correspondence on school bus safety. I refer particularly to your letter of April 2nd.

You indicated to me that the National Conference on School Transportation, which has been since held in May, would receive your "wholehearted support". I would appreciate your letting me know what recommendations were made at the May conference relative to school bus safety and what action is being taken to implement them.

You indicated further in your April letter that "Ten of the current motor vehicle standards are applicable to school buses. Approximately thirty additional rule making matters are in process". Please let me know the status of the thirty rule-making matters to which you referred.

You also indicated in your letter that "The long-range goal is to establish performance criteria for a school bus which will provide maximum safety for the children." Please let me know what progress is being made in this regard.

Your letter also indicated that under the authority of the Highway Safety Act of 1966 there is being drafted a proposed standard on pupil transportation safety. What is the status of this draft?

The *New York Times*, in a July 22, 1970 article, commented that:

Officials charged with enforcing the limited Federal bus safety statutes now on the books—statutes that deal with such items as the treads, lighting and brakes—complain they do not have enough manpower to do an adequate job of policing the buses that each spring and summer take millions of Americans on sightseeing tours around the country.

I would appreciate your comments on this allegation. I would also appreciate any other comments you might have on this article, a copy of which is attached.

Finally, I would appreciate your letting me know what suggestions you might have with respect to what further might be done, legislatively or otherwise, to advance school bus safety.

With best wishes,
Sincerely,

JACOB K. JAVITS.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 25, 1970.

Hon. JACOB K. JAVITS,
United States Senate,
Washington, D.C.

DEAR JAKE: Thank you for your August 3 letter concerning school bus safety.

The National Conference on School Transportation, May 4–7, 1970, devoted its efforts to revising reports of earlier conferences on school bus standards and school bus drivers. The two new reports, Minimum Standards for School Buses, and Standards for School Bus Operation, will be published early this winter by the Florida State Department of Education. I have ordered the Conference results to be carefully evaluated in the course of standards development.

A copy of the Conference Roster is enclosed, wherein it will be noted that the Conference was attended by those State and national authorities primarily concerned with pupil transportation.

With regard to motor vehicle safety standards, rule-making actions currently in progress that are applicable to school buses have been classified into a number of safety areas under headings compatible with the organizational resources and work capacity of the Bureau.

Detailed explanations of the purposes and nature of individual proposals for bus (and school bus) safety regulations are contained in the enclosed schedule sheets extracted from the Bureau's publication, "Program Plan for Motor Vehicle Safety Standards." I would like to emphasize that our total program reflects our complete rule making activity and "the most we can do with what we have."

Completion of rule-making in the noted areas will result in a composite set of standards applicable to school buses. A school bus in total compliance will be a basic vehicle with at least the minimum individual safety features needed in pupil transportation. Proceeding from this basic concept, we will be in a position to analyze and evaluate vehicle performance in terms of a complete system and thereupon establish performance criteria for school bus maximum safety. This remains the long-range goal toward which we are working. An experimental safety school bus project may become part of this endeavor when we have reached more advanced stages of current rule making.

The proposed standard on Pupil Transportation Safety has been mailed to the States and about 100 State and national organizations. A cut-off date of October 1, 1970 has been set for comments. Sent along with this draft were the comments of the National Highway Safety Advisory Committee (draft standard and comments enclosed). Based on the comments received, the standard will again be reviewed by the National Highway Safety Advisory Committee. We plan to issue this standard early next year.

With respect to the comment in the New York Times of July 22, 1970, as to Federal bus safety limitations, this has reference to the fact that the Bureau of Motor Carrier Safety in the Federal Highway Administration has only 103 Safety Investigators to inspect commercial vehicles in interstate commerce in the entire United States, and inspection constitutes only one of several major duties which they perform. The Department is seeking additional resources to strengthen this small organizational unit.

The New York Times article comments on the need for seat belts for passengers on buses. The position of the National Highway Safety Bureau is that until more research is completed in seat design and construction, as well as on effective types of restraints, the installation of lap belts for passengers in present day school buses is not recommended. (Other comments are enclosed relative to this subject.)

The Motor Vehicle and Traffic Safety Act of 1966 (PL 89–563) and the Highway Safety Act of 1966 (PL 89–564) provide ample authority to deal with the problems of school bus safety. Your continued interest in the safety of the nation's school children is appreciated.

Sincerely,

JOHN.

NATIONAL CONFERENCE ON SCHOOL TRANSPORTATION, NEA EDUCATION CENTER, WASHINGTON, D.C., MAY 4–7, 1970

Cosponsored by: American Association of School Administrators, Association of State Directors of Pupil Transportation Services, Council of Chief State School Officers, Florida State Department of Education, National Commission on Safety Education, NEA, Rural Education Association, U.S. Office of Education.

Administered by National Commission on Safety Education, National Education Association, 1201 Sixteenth Street, N.W., Washington, D.C.

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NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE REPORT ON DRAFT PUPIL TRANSPORTATION SAFETY STANDARD—JUNE 30, 1970

The Committee was furnished a copy of the draft standard and referred it to an ad hoc group (Messrs. McLaughlin, Grady, Dumas, Hess, Kachlein, Petitto, Roberts, Sommers, Leonard, and Riggs) chaired by Gen. McLaughlin. This group discussed the draft on May 4 and made the following report to the full Committee on May 5:

"The Bureau intended originally to cover youth transportation in general, such as for camps, religious groups, etc. The need for such broad coverage is strong but for the time being the immediate necessity of getting out a standard covering most of the problem governed the Bureau. The Committee agrees but strongly urges that the Bureau ultimately cover by standard the entire problem of group transportation not under the jurisdiction of the Bureau of Motor Carrier Safety."

"In general, the draft was well received by the Committee. In particular, the Committee favors the following provisions:

—no standees;

—uniform warning system;

—definition of a school bus to cover the tremendous variety of buses needing standardization as to safety features."

"The Committee approves of the omission of safety belts. Present school bus seat backs are only minimally padded, which means that a child belted could be severely injured when jacknifed against the seat back."

"The Committee believes that the draft should include a provision requiring monitors or proctors on the bus, thus freeing the driver to concentrate on the driving task. The monitor would also supervise unloading."

"Another provision which should be considered for inclusion is the periodic reevaluation or re-qualification of drivers. Mr. Riggs suggested that drivers also be required to have first aid training. Finally, several members concurred in the need to require that school buses used for other purposes cover their school bus signs when so used. The Committee was divided over the issue of the school bus as a traffic control device."

The Committee recommended that the draft be submitted to the States and private organizations for comment together with the above report.

NATIONAL HIGHWAY BUREAU TRAFFIC SAFETY PROGRAM STD. 17 PUPIL & YOUTH TRANSPORTATION SAFETY

INTRODUCTION

The transportation of millions of children and youth to and from school and other activities is often attended by needless hazards and tragedies. Inadequately trained drivers, non-uniformity of State laws and regulations, sub-standard design and maintenance of the transporting vehicles often subject young people to considerable risk.

This program area seeks to assist the States in the improvement of transporting children safely in urban and rural areas by giving attention to proper and safe equipment and the selection, training and supervision of drivers and maintenance personnel.

BACKGROUND

"* * * section 402 of the proposed Highway Safety Act is intended to assist the States in initiating safety program elements they do not now have and in improving those they do."—Report No. 1700, House of Representatives, 89th Congress, second session, July 15, 1966, page 22.

"* * * discussion of the standards listed in section 402 of title 23 as contained in this bill is not intended to be limiting; rather it is intended to serve as guidelines to what the Congress intends should be included among the minimum elements of the State highway safety programs. They must necessarily be expanded and revised as changing conditions demand."—Report No. 1700, House of Representatives, 89th Congress, second session, July 15, 1966, page 20.

PURPOSE

To assist the States in achieving the highest attainable level of safe transportation for pupils and youth.

PART I. PUPIL TRANSPORTATION

A. Each State, in cooperation with its school districts and its political sub-divisions, shall have a pupil transportation safety program to assure that school buses are operated and maintained to achieve the highest possible level of safety.

B. A "School Bus" is any motor vehicle while being used for the transportation of any school pupil to or from a public or private school or to or from public or private school activities, except the following:

1. A passenger vehicle designed for and when actually carrying not more than eight persons, including the driver.

2. A nine passenger station wagon when used for the transportation of not more than eight pupils and the driver, other than the regular transportation of pupils to and from a public or private school or the transportation of mentally retarded or physically handicapped pupils.

3. A motor vehicle of any type carrying only members of the household of the owner thereof.

4. A motor vehicle operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned transit system, or scheduled runs but not used exclusively for the transportation of school pupils.

5. A motor vehicle operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned transit system, or by a passenger charter-party carrier and used under a contractual agreement to transport pupils to and from school activities but not used regularly to transport pupils to and from a public or private school.

C. Each school bus shall be painted National School Bus Chrome and black enamel. The school bus chrome shall meet the colorimetric specification of the National Bureau of Standards[1] and black enamel shall meet Federal Standard No. 595a.[2] The chassis, including wheels and front bumper, shall be black enamel; the hood, cowl and fenders shall be in National School Bus Chrome.

D. Each school bus, when used to transport children to or from school, must have the following in black letters located between the warning signal lamps as high as possible without impairing their visibility.

1. The words "School Bus" in letters at least four inches high on both the front and the rear of the bus; and

2. The words "Stop When Lights Flash" in letters at least four inches high on both the front and rear of the bus. Required signs may be moveable or detachable.

E. Each school bus shall be equipped with:

1. A system of signal lamps that conforms to the requirements of paragraph 3.1.3 of Federal Motor Vehicle Safety Standard No. 108 (49 CFR 371.21, February 3, 1967) for the eight light system; and

2. A National Highway Safety Bureau approved school bus stop warning device with alternately flashing red lamps. The signal lamp system and the stop warning device are to be controlled by a single switch, and must be operable by the driver when the school bus is stopped on the highway to take on or discharge children. This warning system shall not operate in connection with any other device.

F. SELECTION, TRAINING AND SUPERVISION

1. The program must include a plan for the selection, training, and supervision of all persons whose duties involve the transportation of school children so that those persons will attain a high degree of competence and knowledge of their duties.

2. Every person who drives a school bus occupied by school children must—

a. Hold a valid operator's license, qualifying him to operate a school bus, issued by the State's driver licensing agency;[3]

b. Meet any special requirements for school bus drivers established by the State agency having primary administrative responsibility for pupil transportation; and

c. Be qualified as a driver under the Motor Carrier Safety Regulations of the Federal Highway Administration.* if he or his employer is subject to those regulations.

3. At least twice during each school year, each child who is regularly transported on a school bus must be instructed in safe riding practice, and participate in emergency evacuation drills.

G. OPERATIONS AND MAINTENANCE

1. The program must include a plan to minimize hazards to occupants of school buses, other highway users, pedestrians and property by—

a. planning of safe routes;[4]

b. providing for loading and unloading zones off the main traveled parts of highways whenever it is practicable to do so;

c. establishing restricted loading and unloading areas for use of school buses at or near schools; and

d. being able to inform motorists that a school bus is stopping or has stopped by use of warning devices that comply with Section E of this standard.

2. When a school bus is in motion, each occupant of the bus must be seated in a seat which includes a designated position as defined in title 49 CFR 371.3*

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[1] Color chips are available from the General Services Administration Business Service Center, Region 3, 7th and D Street, S.W., Washington, D.C. 20407. Specify Federal Standard 595a, chrome yellow enamel #13432.

[2] Color chips are available from source given in footnote 1. Specify Federal Standard 595a, black enamel #17038.

[3] See Highway Safety Program Standard No. 5, *Driver Licensing*, June 27, 1967.

*Title 49 Code of Federal Regulations, Part 291, January 1, 1968.

[4] See Highway Safety Program Standard No. 14, *Pedestrian Safety*, November 2, 1968.

*"Designated seating position" as defined in Title 49 Code of Federal Regulations 371.3 means any plane view lateral location intended by the manufacturer to provide seating accommodation for a person at least as large as a 5th percentile adult female, except auxiliary seating accommodations such as temporary or folding jump seats (32 F.R. 11776—August 16, 1967).

3. When a school bus is operated on a highway and is transporting primarily, passengers other than children, the signs and signals required by Sections D & E of this standard, as well as all other marketing (except license plates) on its front and rear identifying it as a school bus shall be removed, covered, or otherwise concealed.

4. Each school bus must be maintained in safe operating condition through a systematic preventative maintenance program. Each school bus must be inspected at least semi-annually in accordance with Highway Safety Program Manual Vol. 1, published by the Department of Transportation January, 1969. If the operations of a school bus are subject to the Motor Carrier Safety Regulations of the Federal Highway Administration, the bus must be inspected and maintained in accordance with those regulations (Title 49 CFR Parts 393 and 396).

5. Each school bus driver shall perform a daily pre-trip inspection of the bus he drives. At the completion of his day's work or tour of duty, the driver shall report in writing any defect or deficiency in the school bus discovered by, or reported to, him which may affect the safety of the vehicle's operation or result in its mechanical breakdown.

H. *Rules of the Road.* The program must include the enactment of uniform rules for overtaking and passing school buses. The rules shall require that—

1. Except as provided in paragraph 2, the driver of a vehicle meeting or overtaking a school bus that is stopped on a highway to take on or discharge children and on which the warning signals specified in Section E are in operation must stop his vehicle before it reaches the school bus and must not proceed until the warning signals are deactivated; and

2. The rules in paragraph 1 do not apply to the driver of a vehicle upon a highway with separate roadways when meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading or unloading zone which is part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

I. ADMINISTRATION

1. The program must include enactment of a rule prohibiting the operation of a vehicle displaying the words "SCHOOL BUS" unless that vehicle conforms to the requirements of Sections C, D, E of Part I of this standard.

2. The program must include a plan for the systematic collection and reporting of information needed to improve the safety of school bus operations.[6]

3. One State agency shall have primary administrative responsibility for pupil transportation. This agency must employ at least one full-time professional in this field to carry out its responsibilities for pupil transportation.

4. The program shall be evaluated at least annually by the State agency having primary administrative responsibility for pupil transportation. The National Highway Safety Bureau shall be provided with a summary of each evaluation.

PART II. YOUTH TRANSPORTATION

A. Each State, in cooperation with its school districts and its political sub-divisions, shall have a youth transportation safety program to assure that whenever groups of children are transported in a motor vehicle that it shall be operated and maintained to achieve the highest possible level of safety.

B. Motor vehicles used under this Part shall not display the words "School Bus" nor be equipped as indicated in Part I–E of this Standard.

C. Any motor vehicle which is used primarily or regularly to transport groups of children shall be subject to this Part of the Standard, except the following:

1. A motor vehicle of any type, carrying only members of the household of the owner thereof.

2. A motor vehicle identified as a "School Bus".

D. SELECTION, TRAINING AND SUPERVISION

Provisions of Part I–F should be modified to cover drivers of all kinds of motor vehicles.

E. OPERATION AND MAINTENANCE

Provisions should cover control of children not traffic, loading and unloading practices and inspection procedures comparable to those for school buses.

[From Safety, May–June 1969]

SEAT BELTS FOR SCHOOL BUSES

The "School Transportation" section of this issue presents conflicting information regarding the efficacy of seat belts or restraining systems for school bus passengers.

On the one hand is a growing tendency toward legislation at both the State and Federal levels to mandate that belts be available for all children on all school buses. The rationale, if our interpretation is correct, is that persons who are thrown from their seats (or from vehicles) during mishaps, stand a greater chance of injury than do those who remain in their seats, *and* that restraining systems, be they lap belts, shoulder harnesses, or combinations of the two, do what their name implies, i.e., restrain or hold the passenger in his seat. Therefore, children should be protected, to wit, strapped in.

Others, including the National Highway Safety Bureau, say that more research on seat design and construction as well as on effective types of restraints is needed before lap belts or any restraining devices should be recommended.

Still another point of view, based primarily on the anatomical characteristics of children (particularly those under age 10 or 11) suggests that some types of belts may create dangers from lesions, say to the kidney or bladder. Indeed, injuries of this type have already been recorded. Proponents of this position hold, therefore, that no legislation should be passed at this time mandating seat belts for pupils riding in school buses.

Safety goes along with those who oppose the mandating of restraining equipment for all school bus passengers at the present time. We agree that more attention needs to be focused on seat design and particularly on anchorage facilities for the belts or restrainers. The medical admonishments are also sobering and must be given credence.

There is another factor, however, previously not mentioned, that should be considered before such equipment is made mandatory. We are concerned with practically from the standpoint of usage. We've no doubt that, under carefully supervised conditions, the wearing of appropriately designed restraining devices could be successfully accomplished. But by and large, supervisory practices across the nation have not reached the level of sophistication required to facilitate seat belt usage at present.

Until such time as the management of school transportation is more comprehensive and effective, including supervision on the bus itself, we can see a number of potential shortcomings to the mandating of restraining devices. A few examples are offered for consideration.

We have difficulty, for instance, visualizing six straps per 39 inch seat on the typical school bus. This is the number that would be required if each child were to have an individual belt. Even if retractors were used, manipulation of the belts by three students would be difficult. And can you picture youngsters garbed with heavy coats, their arms laden with books, gym clothes, and lunch bags, crowding into their seats and property affixing the restraining devices? Imagine the potential for conflict when it is found that "She's sitting on my seat belt" or "He's using my strap and his buckle," or "There goes my stop and I'm tied to my seat."

If belts were mandated for every passenger (again lacking effective supervision), we predict that they'd be used to trip students in the aisle. They'd serve as whips for boys to use on one another. They'd be knotted, slashed, and stolen.

We should hasten to add that these few difficulties would be but a starting point. Resourceful kids would expand the possibilities to unknown ends.

Let's hope that our legislators, instead of mandating seat belts for school buses, will appropriate needed funds a) to provide a seat for every pupil who rides in a school bus, or b) to enable local school districts to provide adequate supervision for the school transportation program, or c) to make possible a first-rate school bus inspection and maintenance program.

Lap-type belts for pupils in school buses with low-back seats—and that's virtually every school bus in the Nation today—are out!

Who says so?

The National Highway Safety Bureau: ". . . until more research is completed on seat design and construction as well as on effective types of restraints, the installation of lap-belts for passengers in present day school buses is *not recommended.*"[1] (William Haddon, Jr., M.D., former director of the National Highway Safety Bureau in a letter dated 30 Jan. 1969 to Congressman Louis Sherman of the Pennsylvania House of Representatives.)

University of California at Los Angeles: "It is *strongly recommended that seat belts not be installed*[1] in school buses unless higher seatbacks are also included with appropriate padding applied to all sides of the seatback." (UCLA Institute of Transportation and Traffic Engineering in their 1967 report on "School Bus Passenger Protection.")

Legislative Research Commission of Kentucky: "We are on the brink of a new era in school bus safety design and it is *suggested that* the General Assembly *enact no statutes at this time relating to school bus passenger seat belts.*"[1] (1967 report on "School Bus Safety and the Seat Belt.")

Orthopaedic surgeon: "Amongst the striking characteristics of the child's skeleton as compared with the adult, is that its prominences taken as a whole are much less * * *. If we devise a restraint to hook over a particular prominence, when we come to the child, we may find that the prominence is in fact not there. A case in point is the familiar seatbelt—if the seat belt is permitted to ride up above the iliac crest, there is nothing from a skeletal standpoint between it and the backbone. We are already seeing brand-new visceral lesions produced by seat belts, including crushed kidneys, ruptured bladders, . . . If the seat belt is worn properly as a lap belt, it hooks between the thigh bones and the anterior-superior iliac spines of the pelvis. These are broad strong bony projections, hooking slightly downward, that completely prohibit such injuries which can occur only when the seat belt is worn too loose and the patient slides out from under it, or else worn too high. But in a child, these bony prominences are too rounded. The thigh is relatively larger and the pelvis itself is smaller. Therefore, it is almost impossible to apply a seat belt to a youngster in such a way that, with a decelerative force, the child's weight will not be thrown directly upon the viscera.

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[6] See Highway Safety Program Standard No. 10, *Traffic Records*, issued June 27, 1967.

[1] Italics supplied throughout.

"• • • I don't really know how you are going to get anything approaching any lap belt that I have ever seen that would be safe to put on a young child, much less effective. I don't know how old a child must be to safely wear a lap belt, but I would guess the age of 10 or 11." (From transcription of an address by H. Rolf Noer, M.D., Arlington, Virginia, before the Child's Restraint Systems Subcommittee of the Society of Automotive Engineers, in 1968.)

So what are legislators now doing?

They're introducing bills that would require seat belts in school buses. Here are examples:

Oklahoma (H.B. 1383): ". . . No school bus shall be operated on the streets or highways in this state unless same is equipped with seat belts for the number of passengers for which the bus is designed to carry as determined by the local school board."

New York (A. Int. 719): Would add a section to the vehicle and traffic law to make it unlawful, on and after September 1, 1969, to operate a motor vehicle used for transportation of children to and from public or private schools unless equipped with seat safety belts of type approved by motor vehicles commissioner.

Connecticut (H.B. 5518): ". . . and every seat on each school bus will be equipped with a safety belt in conformance with the requirements of section 14–100a."

Rhode Island (H. 1177): "All motor vehicles used in the transportation of nursery school students are hereby required to be equipped with safety harnesses and/or seat belts in a number equal to the number of children who are being transported in said motor vehicle. . . ."

91st Congress (H.R. 162): "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the manufacture for sale, the sale, or the offering for sale, in interstate commerce. . . . of any motor bus manufactured on or after the effective date of this Act shall be *unlawful unless each passenger seat location on such motor bus is equipped with a seat belt.*"

The above bills were 'alive' as this issue of Safety went to press. Some or all may be killed by the time you read this. But next year and the one after that, and still another after that will bring more bills calling for seat belts in school buses.

The *Federal Register* of last January 24 carried a notice that the U.S. Department of Transportation (DOT) is considering a proposed new Federal Motor Vehicle Safety Standard that would impose minimum requirements for child seating systems for use in passenger cars. The purpose would be to specify "requirements for child seating systems to minimize the likelihood of death and injury to children in vehicle crashes or sudden stops by ejection from the vehicle, contact with the vehicle interior, or contact with a child seating system."

One month later, DOT indicated that it is considering extending the application of the above proposed standard from passenger cars to any type of motor vehicle. Clearly, this would include school buses and all other vehicles used in transporting school children. The standard as proposed would become effective January 1, 1970.

NOT A STANDOFF

The two sides of the coin here presented are parodoxical; they suggest a standoff and no further action. Not so! Unless those closest to the firing line—principals, superintendents, school transportation supervisors, and others—make their feelings known,[2] *SAFETY* predicts that legislation will indeed be enacted *requiring* seat belts on school buses. We feel further, that such legislation, at any level, would be ill advised at this time.

[2] Interested persons should contact State Legislators, United States Congressmen and Senators, and Secretary of Transportation, John Volpe.

[From School Bus Fleet, April–May 1967]

NO, WE DO NOT NEED SEAT BELTS IN SCHOOL BUSES

The seat belt, which is certainly a disaster-preventing device in some situations, has become a cause-celebre as far as school buses are concerned.

To have us travel at breakneck speed down the road to seat belts in school buses against our will, may very well be against our better judgment.

At the beginning of the great push for the seat safety belt, the National Safety Council was predicting 40,000 automotive fatalities in one year. Cornell Aeronautical Laboratories was postulating that the use of seat belts could reduce accident-produced injuries 29%, and Drs. Cikas and Huelke of the University of Michigan estimated 34% fewer fatalities if seat belts had been used in the cases investigated by them.

I am certain that I need not belabor the economic implications of 12,500 lives each year. When these estimates became available, it was a simple judgment to make. The value of the seat belt far outweighed its cost. We were convinced that the passenger must be kept inside the vehicle. When the door flew open in the crash, the passenger stood a better chance to survive by being inside the car. The seat belt accomplished this goal. The seat belt, however, was not felt to be the "Be All" and "End All" of passenger safety. It became a factor in automobile safety because it was a satisfactory restraining device from an engineering standpoint, and economically feasible.

Being against seat belts in school buses is a little like being against motherhood, but I should like you to consider some of the arguments that can be advanced.

First, let us look at the basic purpose of the belt—to keep the passenger in the vehicle. The functional design of the automobile with its seats next to the doors demands a restraining device of some sort. The school bus, however, is not similarly designed. There are normally only two doors, and neither of these is in proximate relationship to the passenger. The student passenger is normally seated with a window at shoulder height; a window that is something about 27-inches wide. In some states, a bar is placed across the window for additional security. I submit that it is indeed difficult to eject this passenger.

Indeed, to facilitate his removal, we have mandated emergency doors, push-out windows, and kickout windshields. In this context, I believe that it is interesting to examine the arguments being advanced by the Interstate Commerce Commission in its Ex Parte Order #69 in which it seeks to force interstate buses to be equipped with seat belts. The August 1966 issue of Traffic Safety tells us: "Twenty years ago our greatest concern when inter-city bus was involved in an accident was the problem of getting the passengers out. . . . We required a specific minimum escape area for each seated passenger with a requirement for push-out sash. . . . Modern bus design favors scenic windows that are so large that when a bus overturns the main problem is keeping the people in." The school bus does not have that problem. Our passengers remain in the vehicle.

SCHOOL BUS ACCIDENTS

A recent report by Paul Stewart of the National Safety Council to the School Business Officials Conference at Atlantic City, N.J., contains these figures about school bus accidents. During 1965, 220,000 vehicles transported 16,000,000 pupils daily and operated a combined total distance of 1,750,000,000 miles. There were 32,000 incidents; 22,000 collisions with other vehicles; 3,000 collisions with fixed objects; 2,500 non-collision accidents and 4,500 other. Far too many, of course. However, let's look at the fatalities. There were 60 pupil deaths. Four died in collisions with other vehicles. No deaths from collision with fixed objects. Five pupils deaths 'n non-collision accidents. Six in other types of accidents. Appallingly, however, there were 15 pupils killed by their own bus and 30 by another vehicle as they approached or left the bus.

Thus, there were nine deaths inside the vehicle as a result of 27,500 accidents. How many could seat belts have saved?

It would be easy to say 3 or 4 by using the 34% which we have from the work done in auto safety. However, we must remember that by far the greatest number of these deaths occurred when passengers were ejected from their automobiles. This type of fatality does not occur in school buses. I think that the number would be closer to one than to three, if any lives could be saved at all.

Now, let us look at the cost. The estimates of installation costs for seat safety belts in 60 passenger buses vary from $240 to $290 per bus. The basic cost then to equip 220,000 school buses in the United States would range from $52,800,000 to $63,800,000. I have used the term "basic" for a very good reason. I do not believe that the cost is such a simple problem in mathematics. I see some other problems.

BASIC PROBLEMS

The first problem is that of the standing passenger. The seat belt is just that. It keeps the passenger in his *seat*. Is the standee a second class citizen? Whose child shall stand? Yours or mine? What protection would you afford him?

The immediate reply is to eliminate the standing passenger. Fine! Wisconsin has done it. But again, let us look at the cost! The annual cost for school transportation in New York is $75 million. Our law permits a 20% passenger standing load. While we may say that its purpose is to take care of contingencies, in actual practice, the 60 passenger bus is considered to be available for 72 passengers. Thus, New York's transportation bill would rise nearly $15 million a year before seat belts could be installed. Project the cost in your state and the nation involved in removing the standing passenger.

I know that we may be charged with placing a dollar value of human life, and especially on the lives of our children. But I feel that we must ask whether education can stand this additional burden in this function of transportation which basically adds nothing to the education of the student. How many more dollars can we demand for auxiliary services from our taxpayers in an economy now burdened with a foreign incident that drains a billion dollars a month from it.

In the early 1960's, my company became involved in a pilot project to install seat belts in school buses. We installed one seat belt for each seat in the vehicle, thus strapping three passengers together. We attached the belt to the seat frame. We continued the experiment for something over a month.

A letter from a New York State official calling attention to the pilot project stated that since no accidents occurred during the period of the experiment, the results were not conclusive. His statement was true in its proper context, of course. We didn't have any accidents, but we certainly had a rash of incidents.

Our experiment told us many things. First, it told us that the American school child is a healthy, enthusiastic creature prone to pranks without regard for their consequences. That piece of webbing with a buckle on the end is an irresistably attractive nui-

sance, and it was used more as a weapon or a Yo-Yo than as a safety device. Then, when it was discarded, it ended up across the aisle so that it could be tripped over by a book-carrying student eagerly shoving his way to the door to freedom.

We had high hopes that we might help the educational process by having children use belts and then have the experience carry over into the home. Instead, we began to develop a discipline problem. This became an area in which a student might disobey the driver without serious consequence. The opportunity for controversy developed. Quote—"My father says anyone who wears a seat belt is a nut!"—Unquote.

We understand that our method of installation was not the approved one, but I hesitate to conjecture on what the results might have been with three sets of seat belts belted to the floor behind the seat.

Our conclusion was that although we had not proved whether seat belts had any value at all as a life-saving device when installed in a school bus, we were convinced that the belt as currently engineered was ineffectual and potentially dangerous. I have seen no development in the seat belt since that time to change my opinion.

To this point I have been negative in my approach, and I know that this will not satisfy the clamor that is certain to arise when legislators begin to get on this popular bandwagon. What do I think should be done?

Two things stand out as a result of my research in this field. First, the Crash Test Program at U.C.L.A. The occupant of seat 8–R on the aisle is thrown forward into the aisle, injuring his rib cage, but he lives. Next to him, the occupant of the window seat in 8–R is belted in. At the moment of impact he lunged forward, held in by his belt and strikes his head on the bar of the seat in front of him. He could not have survived the crash.

Second, forty-five school children were killed outside of the bus in 1965. Fifteen by their own bus, and thirty by vehicles passing the bus as the students were loading or unloading.

New York State is involved in a Safety Car Feasibility Study. This study is the result of the conviction that the vehicle in which we ride must be made safe for the "second accident" that the passenger experiences. It asks the question whether the interior of the vehicle can be designed to reduce the seriousness of injury to the passenger. I believe that we might well spend some of these projected millions on an improvement of the interior of our school buses.

New York State mandates crash pads on seat rails, shoulder panels and door headers on its district owned vehicles. This requirement instituted by Maurice Osborne, when he was Director of Field Financial Services in the State, have materially decreased injuries in New York. I am convinced that there are other areas inside the bus that could benefit by good safety engineering.

The development of the New Jersey type light by Dr. Orville G. Parish, Director of Pupil Transportation, Department of Education, State of New Jersey, is an example of the valid expenditures of dollars to save some of the 30 lives that are lost outside of the vehicle to other cars. The mandatory cross-over mirror in New York State can save some of those 15 lives lost to the school bus. Further, dollars spent in driver training will save more of those nine lives lost inside the bus than any safety device ever could.

[From the South Shore Record, Hawlett, N.Y., Aug. 6, 1970]

TERM SEAT BELTS HAZARDOUS

Should school buses be equipped with seat belts? The question, raised in the aftermath of the Hillel School bus tragedy, was answered here this week with a unanimous "No" from school authorities and bus operators.

Among the reasons given were these:

The seat belt provides, not safety, but a hazard. In a collision, it would act as a fulcrum, throwing the child's torso forward so that his head would be struck on the seat ahead, and then throwing him back in a whiplash motion. Without a belt, the child would slide to the floor and injuries would be less severe.

Where seat belts have been installed (they are required by state law in "mini buses" and station wagons), the children use them as weapons. Said one bus operator, "These kids start swinging at one another with the buckles—if they don't swipe the buckles first."

If belts were made mandatory, every bus would need a matron to be sure the restraining devices were on, and adjusted. Time for the trip to school and the return would be more than doubled.

It would be impossible to install restraining devices three abreast. School buses have 10 rows of seats, accommodating 20 older children or 60 younger children, the latter seated in threes. (State law permits school buses to carry up to 72 passengers, with no more than 12 standees.)

The New York State Education Department specifically opposes installation of seat belts on the grounds that they would not contribute to greater safety and could increase hazards.

Asked by the Record if harness restraints might be feasible, one bus operator said that they could not be installed in present-day buses. Another, asked by this reporter, if he favored padding bus interior said, "we have 1970 buses, padded all over, and the kids have already ripped the padding to shreds." Baumann Bus, which is the carrier for District 14, has padded seat bars on all its equipment.

All the operators agreed that for long trips, school buses should not be used, and that coaches should be hired. (This is standard procedure in Districts 14 and 15.) "That's the place for seat belts," said John Krpata of Brothers Coach in Hewlett. Mr. Krpata added that he would like to see long-haul buses altered. At present they are equipped with so-called safety windows that open on impact and, as in the Hillel accident, make it possible for a child to be thrown out.

Dr. Samuel Cohen, District 15 superintendent of schools, this week issued a statement on school bus safety, to the effect that there is no clear-cut evidence that seat belts are desirable or necessary, especially when they are opposed by the state Education Department and the National Highway Safety Bureau. The latter states that until there is intensive research on seat design and methods of restraint, present-day belts are not advised.

Dr. Cohen listed the safety precautions taken in District 15, which is served by the Independent Coach Company. Each bus must be inspected every three months by the PSC. Every driver must have an annual physical and must have a Class 2 license in valid condition. Every driver hired by Independent must be approved by the district. The district reserves the right to fire any driver without specifying the reason. Drivers must wear seat belts.

He added that the District 15 board of education is conducting its own investigation of the feasibility of seat belts. "Within the next few months," he said, "the board will announce either its conclusion that the State Education Department's position is justified or that certain specific actions will be taken to make changes in school buses for greater student safety."

THE ANSWER?

"Education, not seat belts, is the answer to the problem. I would like to see the PTA's and the administrations conduct safety programs in school. These kids should be taught how to board a bus and how to get off. They should learn not to stick their heads and arms out of the windows. They should be educated to stay in their seats, not jump up and down on them. They should be taught not to run in the aisles and not to distract the driver. Discipline is the biggest safety problem we have. I believe that if you train a child early enough, you've got the battle won. We have a safety engineer who will go out and talk at assemblies, but the schools don't seem to make the time available more than once in a while."

LEO D'AMATO,
Baumann Bus Corp.

EXTENSION OF AUTHORIZATION OF APPROPRIATIONS FOR THE ANTI-POVERTY PROGRAM

Mr. JAVITS. Mr. President, the authorization of appropriations for programs under the Economic Opportunity Act of 1964 will expire June 30, 1971. We will be appropriating funds for the rest of this fiscal year, but I am sure that Senators will want to know what the future of our antipoverty efforts is likely to be. It is for that reason that I speak today.

Mr. President, I rise today to make three basic recommendations to the administration and to the Congress for consideration during the coming months in respect to continuation of the poverty program.

First, I urge that the administration and the Congress support legislation to authorize appropriations for at least an additional 5 years—through June 1976. I also recommend that we express a general long-term commitment to the elimination of poverty by giving the programs and the agency "permanent" status by eliminating the various "duration of programs" provisions, under which the basic authority for the existence of the Office of Economic Opportunity, and for carrying out of the programs, would expire June 30, 1972. Although programs could not be meaningfully continued without corresponding authorizations of appropriations even with the removal of these time limitations, we must express next year a long-term commitment.

Second, I urge that the extension be accompanied by a strong commitment on the part of the administration and the Congress to the principle of involvement by community action agencies and other community-based organizations, and a strong commitment to programs and activities that encourage meaningful self-help and self-determination by the poor.

Third, I hope that the administration and the Congress will explore new ways of providing adequate funds for poverty programs, and new ways to increase the Office of Economic Opportunity's ability to act as the independent advocate for the poor.

FIVE-YEAR EXTENSION

Mr. President, last year, with the full support of the administration, the poverty program was given a 2-year extension. The time has come to give the Office of Economic Opportunity and the programs thereunder a tenure sufficient to provide full opportunity to implement the legislative goal of the Economic Opportunity Act:

To eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity to work, and the opportunity to live in decency and dignity.

While so many agencies and programs serving particular constituencies enjoy the security of permanent status, the poverty programs are put up for "re-election" every 1 or 2 years, resulting often in an undermining of the anti-poverty effort. Since the Economic Opportunity Act was enacted in 1964, the poverty program has been extended five times. As a result, not only has undue pressure been put on the Office of Economic Opportunity to dampen program initiatives, but appropriations are too often not acted upon until well after the year has begun because the fate of authorizing legislation is unknown. Local efforts and the efforts of thousands of dedicated poverty workers are held up. As important, instead of demonstrating new approaches over 3 or 4 years to get meaningful results, test projects are often limited to the short tenure of the most recent authority—sometimes resulting in a limited return on efforts.

It is my hope that next year we can break with these shortsighted efforts of the past and give our antipoverty efforts the security which the poor need.

As I indicated, the legislation I recommend would provide a 5-year extension of the authorization of appropriations through June 1976, and would make the general authority for the programs permanent in the sense that any time limitations upon the continued existence of the Office of Economic Opportunity for the carrying out of programs under the act would be eliminated. These general authorities will expire otherwise on June 30, 1972.

Although the programs should be made permanent, we need not conclude that poverty will be permanent. In fact, I hope that we will accompany next year's legislation with a revival of a practice authorized under the original Economic Opportunity Act, and initiated, but never fully implemented, by the previous administration: the formulation of a 5-year poverty action plan. Such a plan was prepared first in 1965 and was revised annually, but the plans and revisions were never submitted to the Congress.

I urge that such a plan be prepared by the executive branch and submitted to the Congress so that we can establish our goals, determine the relationships between various antipoverty efforts, and give those efforts the same benefit of the preplanning that has accompanied our efforts in defense and in space.

RENEWED COMMITMENT TO COMMUNITY ACTION AGENCIES AND OTHER COMMUNITY-BASED ORGANIZATIONS AND TO THE PRINCIPLES OF SELF-DETERMINATION

Mr. President, not only must we extend the poverty program, but we must extend it in such a way that we indicate our full commitment to the backbone of the program—the community action agencies—and to programs and activities founded on the principle of self-determination of the poor.

In his July 8, 1970 message to the Congress, which set forth widely acclaimed recommendations for Indian Affairs, the President said:

Even as we reject the goal of forced termination so must we reject the suffocating pattern of paternalism . . . There should be no reason why Indian communities should be deprived of the privilege of self-determination merely because they receive monetary support from the Federal government.

Mr. President, while there are special circumstances involved in the case of the Indians, the same basic philosophy should underlie our policies for the Nation's ghettos, barrios and rural poverty pockets. While we must seek an integration of all people and avoid unhealthy, divisive segregation, we must recognize the need for self-determination on the part of those who are seeking to escape from a life of poverty.

To that end, I propose that the administration and Congress take the following steps:

First, I urge that the highest priority in efforts and funding be given to local-initiative activities; those programs and activities initiated by the poor themselves through their community action agencies. There are more than 1,000 such agencies in the Nation. These activities may be distinguished from the so-called national emphasis programs, such as Headstart—which are most often also conducted by community action agencies—by their essentially indigenous nature. Such programs include efforts to provide food or transportation assistance and to undertake new educational programs.

Local initiative has been a great source of new solutions for the problems of poverty; indeed, a number of significant approaches in the national emphasis programs—for example, the emergency food and medical services program—have been fed by the local level to the national level. It is appropriate that the administration's concept of the Office of Economic Opportunity as an "incubator" for new programs and new ideas be applied to community action agencies.

However, according to information prepared by the Office of Economic Opportunity, the percentage of community action funds allocated to local initiative dropped from 48.7 percent in fiscal 1965 to 34.2 percent in fiscal 1967 and to 31.2 percent in fiscal 1970.

Mr. President, last year in the Economic Opportunity Amendments of 1969, the Congress made a basic commitment to local initiative by reserving $328,900,000. It is essential that the commitment be maintained—and indeed expanded—by legislation if necessary. An essential part of next year's legislation must be a specific allocation of funds for this purpose.

Second, I urge the administration and the Congress to guarantee that vital programs such as legal services, VISTA, and other national programs are run to further the clear interest of the poor, independent of controls by State and local governments. It is appropriate that State and local governments be involved in antipoverty efforts generally where they demonstrate both a true commitment to the poor and an ability to take meaningful action, but I am opposed to any action that would give the States coercive control over the activities of those on the local level. The administration has espoused the doctrine of "New Federalism," under which control of manpower and social services programs would be transferred from the Federal Government to the States and to the cities. It is essential that this concept be made a viable part of the poverty program. The doctrine that those on the local level can best determine the "mix" of services that will meet their needs must not stop at the statehouse or at the city hall, but must extend to those in poverty communities.

I think that it is essential that we insure in next year's legislation that VISTA and other programs are not impeded on the State level.

Third, I hope that the administration and the Congress will make it clear that community action agencies are to be the peaceful spokesmen for the poor when it comes to needed services, as well as the providers of those services. The administration has stressed the role of OEO as advocate for the poor within the councils of government at the Federal level. This doctrine should apply also on the local level where the poor are so frequently excluded from the councils of State and local government.

Fourth, if those on the community level are to be heard we must have a legal services program truly independent and uninhibited by adverse pressure—whether on the national, regional, or local level. I shall oppose any effort to limit in any way the basic independence of the legal services program. If the poor are given any basis for losing faith in that program, then what recourse will they have?

The Director of the Office of Economic Opportunity is testifying this morning before the Subcommittee on Employment, Manpower, and Poverty of the Committee on Labor and Public Welfare relating to the legal services program. I know of no single more important service that can contribute to the dignity, community effort, and peace of the individual than legal services.

As John D. Robb, chairman of the American Bar Association's Committee on Legal and Indigent Defenders told members of the Subcommittee on Employment, Manpower, and Poverty of the Senate Committee on Labor and Public Welfare last November 14:

I think this is terribly important. I cannot really get across to the committee our sense of urgency about the need for expansion of legal services to try to repair the divisions that are taking place in our society. We know from documented reports by various presidential commissions and by hearings that you yourselves have participated in that the poor by and large have little confidence in our society, in its structure, in its institutions, in lawyers, in the law, in the court system, and as a result, when their own rights are not honored it is not too surprising, I think, that they riot in the streets and that there is violence on our campuses. What we are trying to do in this program is to have a peaceful vehicle where these disputes can be taken from the strife-torn campuses, in the streets and the fire and burnings that are taking place and give these people a peaceful forum in which the grievances that they have against society

can be aired, where their position can be set forth and where nobody can interfere with that lawyer's sole obligation to represent his client.

Mr. Robb feels, and I agree with him, that this is one of the greatest incentives to stop the riots in ghettos and slums, the kinds of riots which have been such a deplorable feature of our society in the last few years.

Fifth, I hope that there will be an expanded effort in those national program areas which stress local involvement. Greater attention should be given to programs such as the original Special Impact program—modeled after the successful activities in Bedford-Stuyvesant in Brooklyn—under which funds are provided to focus on programs conducted by the poor in their own areas. The Bedford-Stuyvesant project in New York was begun by the late Senator Robert F. Kennedy, Mayor Lindsay, and me. This is a remarkable demonstration project and I hope very much it will be encouraged.

The Special Impact program is to be conducted with an emphasis on community involvement.

We also need a great expansion of neighborhood health centers and of the legal services programs so that health services and legal services are more convenient to the poor.

Sixth, we must insure that community action agencies and other community-based organizations have a role in new antipoverty efforts and in existing programs which were originally established under the Economic Opportunity Act but have been "spun-off" for administration by other departments or agencies of the Federal Government. Expenditures for programs under the Economic Opportunity Act are now less than one-tenth of total Federal expenditures for the poor, and so we must be alert to the involvement of community action agencies in these newly defined efforts. The Senate recently indicated its awareness of this need by adopting the Employment Opportunities and Training Act of 1970, which contains provisions insuring that community action agencies and other community-based organizations will have an appropriate role in operating manpower programs. It is essential that legislation before the Congress in respect to child care, welfare, and other areas stake out a similar role for these vital organizations. I urge the administration to give study to the potential role for community action agencies and other community-based organizations in these new and existing efforts to make specific recommendations to the Congress in respect thereto early next year.

This is a good concept but we have to be very watchful that it is not inundated in bureaucracy and departmentalism. This will take surveillance by us, the OEO and the administration. I take this occasion to give that warning.

On September 11, 1969, in response to a letter from me and Senator GAYLORD NELSON, President Nixon wrote reaffirming:

> The Administration's resolve to improve and strengthen the Community Action agencies now serving through the country. These agencies will be improved to play a more vital role in mobilizing local resources, involving the poor in program and operation, and in training new Neighborhood leadership . . ." "It is my determination to strengthen the Office of Economic Opportunity and its community action arm in contributing to the goal of providing full economic opportunity for every American.

I hope that the President will indicate again his personal commitment to the vital activities of community action agencies and to the concept of self-determination generally as it applies to the poverty program.

NEW ADMINISTRATIVE FORMS AND NEW SOURCES OF FUNDING

Mr. President, in each case I have stressed the importance of the need for freedom from undue adverse interference for those on the local level.

I believe that there is a corresponding need for independence to do the job on the national level.

The Congress has enacted, and the President has signed into law, the administration's far-reaching reform of the U.S. Postal Service. A principle objective of that legislation is to provide the Post Office with sufficient autonomy to serve the public interest.

I hope that the administration will join with me and other interested Members of the Congress in exploring similar ways—whether through a corporate form or otherwise—to give our antipoverty programs freedom to serve the interests of the poor.

In that connection, I also urge the administration to consider additional means of providing more secure and more substantial sources of funding "in trust" for the poverty program. The President has underscored his commitment by requesting increased amounts for the poverty programs in each of the 2 fiscal years of his administration. However the fact remains that while the number of poor persons in the Nation has been decreasing, the net increase of funds for the poor under the poverty program will amount to only $1.30 per poor person in this coming fiscal year over last. By way of illustration, the funds requested for fiscal year 1971 will meet the needs of less than 31 percent of all poor children ages 3 to 6 who need early childhood education; only 1.7 percent of the hard core drug addicts among the poor; only 8.9 percent of those who could benefit from Family Planning services; only 7 percent of the poor who need legal services; and only 7.3 percent of the migrant and seasonal farmworkers.

Mr. President, the administration has evidenced its basic commitment to the poor through its historic proposals for a reform of our welfare system, an expansion of manpower training and related efforts, and increases in efforts to eliminate hunger in America. But the poor are not "home" yet. The Family Assistance Act will cover only 65 percent of those in poverty and provide them with only half the cash assistance needed to sustain an adequate level of life.

Food stamp programs and commodity programs now reach only 9,500,000 of the Nation's 24.3 million poor, and even under the administration's plans for an expansion of those two programs, total participation over the next 2 years will reach only 17,500,000 poor persons, or approximately three-quarters of the poor. Manpower training programs for fiscal year 1971 are projected at a level which is higher than last year, but which will provide employment and training opportunities to less than one-tenth of the unemployed and underemployed persons who can benefit from such programs according to Department of Labor estimates.

The programs under the Economic Opportunity Act are necessary not only to fill gaps in these programs, but to insure their effective "outreach" and to provide the essential ingredient of action initiated by the poor themselves.

We will reach in 1976 both the end of the first 5-year poverty plan which I have proposed, and our bicentennial celebration.

Mr. President, with a poverty program secure in tenure, committed to the concept of self-determination for the poor, conducted with sufficient funds, and free to serve the interest of the poor, we will have evidenced a commitment that should result in making that anniversary a more meaningful celebration for all of our people.

Mr. President, I wish to pay tribute to those who started the antipoverty program: Former President Lyndon Johnson and many of us in Congress.

I hope early next session to introduce legislation to implement these and other proposals.

Mr. President, I close as I began. The reason I speak today is that I believe Senators who will be asked to devote more money to the antipoverty program when the appropriation bill comes up should have an idea what I as the ranking minority member of the committee feel should be the future of the antipoverty program, how far we have come, and how far we have yet to go.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will take up the consideration of routine morning business, with a 3-minute limitation applying, for not to exceed 30 minutes.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORTS ON OVEROBLIGATIONS OF APPROPRIATIONS

A letter from the Acting Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of the Interior for "Education and welfare services", Bureau of Indian Affairs, for the fiscal year 1971, had been apportioned on a basis which indicates the need for a supplemental estimate of appropriation; to the Committee on Appropriations.

A letter from the Acting Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of the Interior for "Resources management", Bureau of Indian Affairs, for the fiscal year 1971, had been apportioned on a basis which indicates a need for a supplemental estimate of appropriation; to the Committee on Appropriations.

REPORT OF U.S. INFORMATION AGENCY

A letter from the Director, U.S. Information Agency, Washington, D.C., transmitting pursuant to law, a report of that Agency, for the 6-month period ended December 31, 1969 (with an accompanying report); to the Committee on Foreign Relations.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the Special Impact Program in Los Angeles is Not Meeting Goal of Providing Jobs for the Disadvantaged, Department of Labor, dated October 7, 1970 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on Substantial Cost Savings From Establishment of Alcoholism Program for Federal Civilian Employees, dated September 28, 1970 (with an accompanying report); to the Committee on Labor and Public Welfare.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution adopted by the Sheet Metal Workers' International Association, Washington, D.C., praying for the enactment of legislation to establish a comprehensive national health insurance program; to the Committee on Finance.

A resolution adopted by the Farragut Ruritan Club, Concord, Tennessee, pledging support to the President and local officials; to the Committee on the Judiciary.

ENROLLED BILL SIGNED

The ACTING PRESIDENT pro tempore (Mr. HOLLINGS) announced that on today, October 7, 1970, he signed the enrolled bill (S. 2264) to amend the Public Health Service Act to provide authorization for grants for communicable disease control and vaccination assistance, which had previously been signed by the Speaker of the House of Representatives.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

H.R. 16997. An act for the relief of Colie Lance Johnson, Junior (Rept. No. 91–1283).

By Mr. McGOVERN, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 13519. An act to declare that the United States holds 19.57 acres of land, more or less, in trust for the Yankton Sioux Tribe (Rept. No. 91–1284); and

H.R. 15624. An act to convey certain federally owned land to the Cherokee Tribe of Oklahoma (Rept. No. 91–1285).

By Mrs. SMITH of Maine, from the Committee on Armed Services, without amendment:

H.R. 9654. An act to authorize subsistence, without charge, to certain air evacuation patients (Rept. No. 91–1287);

H.R. 10317. An act to adjust the date of rank of commissioned officers of the Marine Corps (Rept. No. 91–1288); and

H.R. 14322. An act to amend section 405 of title 37, United States Code, relating to cost-of-living allowances for members of the uniformed services on duty outside the United States or in Hawaii or Alaska (Rept. No. 91–1286).

By Mr. HART, from the Committee on Commerce, with amendments:

H.R. 12475. An act to revise and clarify the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act, and for other purposes (Rept. No. 91–1289).

EXECUTIVE REPORTS OF COMMITTEES

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

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

Artemus E. Weatherbee, of Maine, who was confirmed by the Senate, September 1, 1970, as U.S. Director of the Asian Development Bank, to serve on the Bank with the rank of Ambassador;

Christopher H. Phillips, of New York, to be the deputy representative of the United States of America to the United Nations with the rank and status Ambassador Extraordinary and Plenipotentiary; and

G. Edward Clark, of the District of Columbia, a Foreign Service Officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Senegal, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary to the Republic of The Gambia.

Mr. FULBRIGHT. Mr. President, from the Committee on Foreign Relations, I also report sundry nominations in the Diplomatic and Foreign Service which have already appeared in the CONGRESSIONAL RECORD and ask unanimous consent, to save the expense of printing them on the Executive Calendar, that they may lie on the Secretary's desk for the information of any Senator.

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

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

John P. Clyne, of the District of Columbia, and sundry other persons, for appointment and promotion in the Diplomatic and Foreign Service.

By Mr. EASTLAND, from the Committee on the Judiciary:

Edwin L. Mechem, of New Mexico, to be a U.S. district judge for the district of New Mexico;

Paula A. Tennant, of California, to be a member of the Board of Parole;

Roger C. Cramton, of Michigan, to be Chairman of the Administrative Conference of the United States;

Fred C. Mattern, Jr., of Virginia; John H. Schneider, of Virginia; and Saul I. Serota, of Maryland, to be examiners-in-chief, U.S. Patent Office;

Curtis C. Crawford, of Missouri, to be a member of the Board of Parole;

L. Clure Morton, of Tennessee, to be U.S. district judge for the Middle District of Tennessee;

John Paul Stevens, of Illinois, to be a U.S. circuit judge for the seventh circuit;

Robert H. McWilliams, Jr., of Colorado, to be U.S. circuit judge for the 10th circuit;

Sam C. Pointer, Jr., of Alabama, to be a U.S. district judge for the northern district of Alabama;

Walter K. Stapleton, of Delaware, to be a U.S. district judge for the district of Delaware; and

Frank J. McGarr, of Illinois, to be a U.S. district judge for the Northern District of Illinois.

By Mr. BYRD of West Virginia, from the Committee on the Judiciary:

Irving W. Humphreys, of West Virginia, to be U.S. marshal for the southern district of West Virginia.

By Mr. SCOTT, from the Committee on the Judiciary:

Donald W. VanArtsdalen, of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania;

Edward R. Becker, of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania;

Daniel H. Huyett, III, of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania;

J. William Ditter, Jr., of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania;

William W. Knox, of Pennsylvania, to be a U.S. district judge for the western district of Pennsylvania; and

Malcolm Muir, of Pennsylvania, to be a U.S. district judge for the middle district of Pennsylvania.

BILLS AND A JOINT RESOLUTION INTRODUCED

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

By Mr. DODD:

S. 4440. A bill for the relief of Kevin Tomas; and

S. 4441. A bill for the relief of Mr. and Mrs. Jean-Paul Etienne Picot and Francois and Yves Picot; to the Committee on the Judiciary.

By Mr. COTTON:

S. 4442. A bill for the relief of Vera Lucia Carvalho, Marcia Maria Carvalho and Marcos Vinecius Carvalho; to the Committee on the Judiciary.

By Mr. MILLER:

S. 4443. A bill to amend the Internal Revenue Code of 1954 to allow a carry back and carry forward, in computing the minimum tax on tax preferences, for certain income taxes paid or accrued in years in which a taxpayer is not liable for the minimum tax; to the Committee on Finance.

By Mr. EASTLAND:

S. 4444. A bill for the relief of Mavis Blake; to the Committee on the Judiciary.

By Mr. PACKWOOD:

S. 4445. A bill to amend the Soil Conservation and Domestic Allotment Act, as amended, to permit sharing the cost of agriculture-related pollution prevention and abatement measures; to the Committee on Agriculture and Forestry.

By Mr. MONDALE:

S. 4446. A bill for the relief of Lidiette Bolanos Vargas; and

S. 4447. A bill for the relief of Lau Siu Chsung; to the Committee on the Judiciary.

By Mr. INOUYE (by request):

S. 4448. A bill for the relief of Mrs. Kong Sook Lee; to the Committee on the Judiciary.

By Mr. NELSON:

S.J. Res. 241. Joint resolution designating the third week of April of each year as "Earth Week"; to the Committee on the Judiciary.

(The remarks of Mr. NELSON when he introduced the joint resolution appear below under the appropriate heading.)

SENATE JOINT RESOLUTION 241—INTRODUCTION OF A JOINT RESOLUTION DESIGNATING THE THIRD WEEK OF APRIL OF EACH YEAR AS "EARTH WEEK"

Mr. NELSON. Mr. President, I introduce for appropriate reference a Senate joint resolution to name the third week in April of each year "Earth Week."

Congressman PAUL N. MCCLOSKEY, JR., of California, who served with me as co-chairman of the nonpartisan, educational Earth Day effort last April, today is introducing the same measure as a House joint resolution.

The purpose of this measure is to give appropriate congressional recognition to the need for a continuing nationwide effort to increase the awareness of environmental problems and how to deal with them. The objective which we all share is to protect and actually enhance the quality of our environment. This is as important a goal as has ever been established by this Nation: The decency of life in America, and ultimately, the survival of the human race, are at stake.

Further, designation of an annual Earth Week would provide the Nation and all its citizens the opportunity for a regular assessment of progress from the community level up towards improving environmental quality, and for a determination of further steps needed to achieve a decent environment.

Recognizing the importance of a sustained environmental effort at all levels in America, the National Governors' Conference in August adopted unanimously a resolution for the Governors to declare the third week in April Earth Week in their respective States.

Earth Day last April has come to symbolize a great awakening across the country to the serious and growing threat to our environment and consequently to the quality of American life. The old and the young, the conservative and the liberal, Democrats and Republicans, participated in this nationwide event, dramatic evidence that Earth Day reached the grassroots in our communities and cities to tap a great common concern. It is estimated that 3,000 colleges and universities, 10,000 high schools and grade schools, and an additional 2,000 communities were involved in this educational, broad citizen participation effort.

The challenge now, as pointed out in the Senate joint resolution is to encourage a continuing commitment by all interests, including education, agriculture, business, labor, Government, civic, and private organization, and individuals, to join together in a cooperative effort to preserve the integrity and livability of our environment.

In view of the fact that Earth Day last April received wide participation and support in Congress Congressman MCCLOSKEY and I will write all Senators and Congressmen shortly asking their cosponsorship of this resolution.

Mr. President, I ask unanimous consent that the text of the Senate joint resolution and the text of the resolution adopted by the National Governors' Conference be printed in the RECORD at this point.

The PRESIDING OFFICER (Mr. SCHWEIKER). The joint resolution will be received and appropriately referred; and, without objection, the joint resolution and resolution of the National Governors' Conference will be printed in the RECORD.

The joint resolution (S.J. Res. 241) designating the third week of April of each year as "Earth Week," introduced by Mr. NELSON, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S.J. RES. 241

Whereas 3,000 colleges and universities, 10,000 high schools and grade schools, and 2,000 communities participated in programs last April which culminated in Earth Day, and,

Whereas this nonpartisan, constructive, educational effort involved and demonstrated the shared environmental concerns of a wide spectrum of Americans of all ages, interests and political persuasions, and,

Whereas the activities which culminated in the week-long programs of "Earth Day" represented and promoted a much greater American awareness and understanding of the serious environmental problems facing the nation, and,

Whereas there is a need for continuing environmental education and for a continuing nationwide review and assessment of environmental progress and of further steps which must be taken, and,

Whereas there is a need to encourage a continuing commitment by all interests, including education, agriculture, business, labor, government, civic and private organizations, and individuals, to join together in a cooperative effort to preserve the integrity and livability of our environment: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the third week of April of each year is designated as "Earth Week," a week to review and assess environmental progress and to determine what further steps must be taken, to continue the nationwide effort of education on environmental problems, and to renew the commitment of each American to restoring and protecting the quality of the environment.

The resolution, presented by Mr. NELSON, is as follows:

RESOLUTION: THE ESTABLISHMENT OF AN ANNUAL EARTH WEEK

Whereas, there is an urgent need to promote a broader awareness and understanding of the environmental crisis facing each and every state in the United States; and

Whereas, there is a compelling need to encourage a continuing commitment by all interests including education, agriculture, business, labor, and civic and private organizations, to work to solve these fundamental environmental problems;

Now, therefore, be it resolved that we as Governors assist in focusing the nation's attention on environmental problems and their solutions by declaring the third week in April "Earth Week" in our respective states and seek the broadest participation in its activities.

ADDITIONAL COSPONSORS OF BILL

S. 3596

At the request of the Senator from New York (Mr. GOODELL) the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 3596, to amend the Fur Seal Act of 1966 by prohibiting the clubbing of seals after July 1, 1972, the taking of seal pups, and the taking of female seals on the Pribilof Islands or on any other land and water under the jurisdiction of the United States.

S. 4348

At the request of the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Florida (Mr. GURNEY) was added as a cosponsor of S. 4348, to prohibit assaults on State law enforcement officers, firemen, and judicial officers.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 7, 1970, he presented to the President of the United States the following enrolled bills:

S. 1933. An act to provide for Federal railroad safety, hazardous materials control, and for other purposes; and

S. 2264. An act to amend the Public Health Service Act to provide authorization for grants for communicable disease control and vaccination assistance.

NOMINATION OF DR. ELBURT OSBORN TO BE DIRECTOR OF THE BUREAU OF MINES—NOTICE OF HEARING

Mr. ALLOTT. Mr. President, today the President announced his nomination of Dr. Elburt Osborn to be Director of the Bureau of Mines, in the Department of the Interior. Dr. Osborn is now vice president for research at Pennsylvania State University.

I wish to announce to the Senate and the public that hearings will be held on Dr. Osborn's nomination on Monday, October 12, at 2 p.m., in room 3110, New Senate Office Building.

Any Senator or other citizen who would like to participate in the hearing is hereby invited to do so. Anyone wishing to testify should notify the committee.

Mr. President, Dr. Osborn has an impressive background. I ask unanimous consent that biographical data supplied to the committee be printed in the RECORD.

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

DR. ELBURT F. OSBORN

Osborn, Dr. Elburt Franklin, b. Winnebago Co, Ill, Aug. 13, 11; m. 39; c. 2. Geology. B.A, DePauw, 32; fel. Northwestern, 32–34, M.S., 34; fel. Calif. Inst. Tech, 34–37, Ph. D. (geol.), 38; hon. Sc. D. Alfred 65. Lab. asst mineral, DePauw, 32; geologist, Que-on-Gold Mines, Can, 36; instr. geol., Northwestern, 37; geologist, Val d'Or, Can., 38; petrologist, geophys. lab, Carnegie Instit, 38–42; phys. chemist, Nat. Defense Res. Cmt, 42–45; res. chemist, Eastman Kodak Co., N.Y., 45–46; prof. geochem & head dept. earth sci, col. mineral industs, Pa. State, 46–52, assoc. dean, 52–53, dean 53–59, V. Pres. Res, 59– Nat. Sci. Found. sr. fel. Cambridge, 58. Mem. adv. cmt, geophys. br, Off. Naval Res, Nat. Acad. Sci-Nat. Res. Coun, 47–50; earth sci. panel, Nat. Sci. Found, 53–55, div. cmt. math, phys. & eng. sci, 55–59, chmn, 57–58, mem. ad. panels course content improve prog., 60–61, phys. sci. facilities, 60–64; dir. Am. Geol. Inst, 56–59; mem. adv. panels, mineral prod. div, Nat. Bur. Standards, 58–62, chmn, 58–59, metall. div, 58–64, mem. div. chem. & chem. tech,

60–63; adv. cmt. basic res., U.S. Army Res. Off Ceramics, 60–63; Mat. Adv. Bd., Nat. Acad. Sci-Nat. Res. Coun, 65–69; mem. Int. Union Geol. Sci. Alternate bd. mem, Inst. Defense Anal, 58–; mem. bd., Univ. Corp. Atmospheric Res., 59–; v. Chmn, SIRIMAR Corp, Italy, 61–63; mem. bd. Geisinger Med. Center, 62–; Pa. Health Res. Inst. 66. Award, Am. Iron & Steel Inst, 54. Fel. AAAS; fel. Am. Ceramic Soc. (v. pres, 63, pres. elect, 64, pres., 65); fel. Geophys. Union; fel. Geol. Soc; fel. Mineral Soc. Am. (v. pres, 60, pres, 61); Inst. Min, Metall. & Petrol. Eng; Chem. Soc; Geochem. Soc; Newcomen Soc; Soc. Econ. Geol. (v. pres, 65); Can. Ceramic Soc; Mineral. Asn. Can; Mineral. Soc. Gt. Brit. & Ireland; Int. Asn. Volcanology; Int. Mineral. Asn Physicochemical and structural petrology; glass technology; physical chemistry of refractories; blast furnace and open hearth slags; phase equilibria in mineral systems; industrial minerals; mineral synthesis Address: 207 Old Main Bldg., Pennsylvania State University, University Park, Pa. 16802.

BIOGRAPHICAL DATA, FEBRUARY 1970

Elburt Franklin Osborn, Vice President for Research, the Pennsylvania State University.

Birthplace and Family:

Birth: Winnebago County, Illinois, August 13, 1911.

Parents: William F. Osborn (deceased). Anna (Sherman) Osborn (deceased).

Brothers: Lowell S. Osborn, Staten Island, New York. Wendell L. Osborn, Georgetown, Texas.

Married: Jean McLead Thomson, Canada, August 12, 1939.

Children: James F. Osborn; B. 1942. Ian C. Osborn, B. 1946.

Education:

West Chicago High School 1924–1926.

Roosevelt High School, Chicago, Illinois 1926–1928.

Crane Jr. College, Chicago, Illinois, 1928–1929.

DePauw University, Greencastle, Indiana 1929–1932, B.A.

Northwestern University, Evanston, Illinois 1932–1934, M.S.

California Institute of Technology, Pasadena, California 1934–1937, Ph. D.

Employment:

Teaching Fellow, in geology, Northwestern University 1932–1934.

Teaching Fellow, California Institute of Technology 1934–1937.

Geologist, Que-on-Gold Mines, Ltd., Quebec 1936.

Instructor in geology, Northwestern University 1937.

Geologist, Val d'Or, Quebec 1938.

Petrologist, Geophysical Laboratory, Carnegie Institution of Washington 1938–1942.

Physical Chemist, Division 1, National Defense Research Committee, Office of Scientific Research and Development 1942–1945.

Research Chemist, Eastman Kodak Company, Rochester, New York 1945–1946.

Professor of Geochemistry and Chairman of the Division of Earth Sciences, College of Mineral Industries, The Pennsylvania State University 1946–1952.

Associate Dean, College of Mineral Industries, The Pennsylvania State University 1952–1953.

Dean, College of Mineral Industries, The Pennsylvania State University 1953–1959.

Vice President for Research, The Pennsylvania State University 1959– .

Professional Societies Membership:

American Association for the Advancement of Science.

American Ceramic Society.

American Chemical Society.

American Geophysical Union.

American Institute of Mining, Metallurgical and Petroleum Engineers.

Canadian Ceramic Society.

Geochemical Society.

Geological Society of America.

Geological Society of Washington.

International Association of Volcanology.

Mineralogical Society of America.

Mineralogical Association of Canada.

National Association of State Universities and Land-Grant Colleges.

National Council of University Research Administrators.

Pennsylvania Research Corporation.

Society of Economic Geologists.

Western Pennsylvania Conservancy.

Principal Professional Offices and Committees:

American Association for the Advancement of Science Council 1964–1968 (Representative of American Ceramic Society); 1960–1961 (Representative of Society of Economic Geologists).

American Ceramic Society:

Edward Orton, Jr. Memorial Lecturer for 1970.

Long Range Planning Committee 1970.

Honorary Members Committee 1966– , Chairman 1970— .

Engineering Committee 1967— .

Continuing Education Committee 1966– .

Trustees Nominating Committee 1964–1967, Chairman 1964–1965.

President 1964–1965.

President Elect 1963–1964.

Vice President 1962–1963.

Publications Committee 1958–1963, Chairman 1960–1963; 1968— , Chairman 1970— .

Board of Trustees 1962–1965, 1958–1961.

Executive Committee 1962–1965, 1958–1959.

Technical Advisory Committee, National Bureau of Standards 1954–1958, Chairman 1957–1958.

Basic Science Division Trustee 1957–1960, Chairman 1951–1952.

American Geological Institute:

Member, House of Representatives 1968– .

Director 1956–1959.

American Institute of Mining, Metallurgical and Petroleum Engineers, Inc.:

Hal Williams Hardinge Award Committee 1969– .

Geochemical Society:

President 1967–1968.

Vice President 1966–1967.

Councilor 1958–1960.

Geological Society of America:

GSA Representative to U.S. National Committee on Geochemistry 1968– .

Ad Hoc Committee on Revision of By-Laws 1961–1963.

Councilor 1959–1962.

Policy and Administration Committee 1956–1958.

International Mineralogical Association: Representative of Mineralogical Society of America 1961–1964.

International Union of Geological Sciences: National Committee Member 1961–1964.

Mineralogical Society of America:

Chairman, 50th Anniversary Celebration Symposium: "Mineralogy and Petrology of the Upper Mantle", November 1969.

Representative to the American Geological Institute 1968– .

President 1960–1961.

Vice President 1959–1960.

Associate Editor American Mineralogist 1953–1955.

Councilor 1950–1953.

National Academy of Sciences—National Academy of Engineering—National Research Council:

Committee on Engineering Aspects of Environmental Quality 1970– .

Executive Committee, Division of Earth Sciences 1969– .

U.S. National Committee on Geochemistry 1968– .

Committee on Mineral Science and Technology, Chairman 1966– .

National Materials Advisory Board 1969– .

Materials Advisory Board 1965–1969.

Committee on Basic Research Advisory to the U.S. Army Research Office in Ceramics 1960–1963.

Division of Chemistry and Chemical Technology 1960–1963.

Advisory Panel to the Metallurgy Division of the National Bureau of Standards 1958–1964.

Advisory Panel to the Mineral Products Division of the National Bureau of Standards 1958–1962, Chairman 1958–1959.

Committee Advisory to Geophysics Branch of Office of Naval Research 1947–1950.

National Association of State Universities and Land-Grant Colleges: Water Resources Committee 1965– .

National Science Foundation:

Advisory Panel for Physical Sciences Facilities 1960–1964.

Advisory Panel on Course Content Improvement Programs 1960–1961.

Divisional Committee for Mathematical, Physical and Engineering Sciences 1955–1959, Chairman 1957–1958.

Earth Sciences Panel 1953–1955.

Pennsylvania Research Corporation, Secretary.

Society of Economic Geologists: Vice President 1965.

Honorary societies:

Keramos.

Phi Betta Kappa: President, Penn State University, Chapter 1951.

Phi Kappa Phi.

Phi Lambda Upsilon.

Sigma Xi:

The Committee on National Lectureships 1969– .

National Executive Committee 1961–1964.

President, Penn State University Chapter 1952.

Boards:

The Institute for Medical Education and Research, The Geisinger Medical Center, Board of Directors, 1969– .

Earth Sciences Advisory Board, Stanford University 1969– .

Pennsylvania Science of Engineering Foundation, Member of Board 1968– .

Pennsylvania Health Research Institute, Board of Directors 1966– .

SIRIMAR Corporation, La Spezia, Italy, Board of Directors, Vice-Chairman 1961–1963.

The Geisinger Medical Center, Board of Directors, Danville, Pennsylvania 1962– .

University Corporation of Atmospheric Research, Board of Directors 1959–1967 (PSU Representative at Corporation Members' Meeting 1967–).

Honors and Awards:

Member National Academy of Engineering 1968.

Doctor of Science (honorary) Alfred University 1965.

Fellow American Association for the Advancement of Science.

Fellow American Ceramic Society.

Fellow American Geophysical Union.

Fellow Geological Society of America.

Fellow Mineralogical Society of America.

Honorary Life Member Canadian Ceramic Society 1965.

Edward Orton, Jr. Memorial Lecturer for 1970, American Ceramic Society.

National Science Foundation, Senior Post Dictoral Fellow, Cambridge University, England 1958.

American Iron and Steel Institute Regional Technical Meetings Award Medal 1954.

War-Navy Certificate of Appreciation June 1, 1947.

War Department Certificate of Appreciation November 30, 1945.

Publications: See Separate Listing.

Other organizations:

Cosmos Club.

Delta Tau Delta: Faculty Advisory, Penn State, University Chapter 1953–1958.

NOTICE OF HEARING ON 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 Tuesday, October 13, 1970, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

Carl O. Bue, Jr., of Texas, to be U.S. district judge for the southern district of Texas, vice Joe McDonald Ingraham, elevated.

Peter T. Fay, of Florida, to be U.S. district judge for the southern district of Florida, vice a new position created by Public Law 91–272, approved June 2, 1970.

James L. King, of Florida, to be U.S. district judge for the southern district of Florida, vice a new position created by Public Law 91–272, approved June 2, 1970.

James R. Miller, Jr., of Maryland, to be U.S. district judge, district of Maryland, vice a new position created by Public Law 91–272, approved June 2, 1970.

Paul H. Roney, of Florida, to be a U.S. circuit judge for the fifth circuit, vice George H. Carswell, resigned.

Robert H. Schnacke, of California, to be U.S. district judge for the northern district of California, vice George B. Harris, retired.

Nauman S. Scott, of Louisiana, to be U.S. district judge for the western district of Louisiana, vice a new position created under Public Law 91–272, approved June 2, 1970.

Gerald B. Tjoflat, of Florida, to be U.S. district judge for the middle district of Florida, vice a new position created by 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 Mississippi (Mr. EASTLAND), chairman; the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Nebraska (Mr. HRUSKA).

ADDITIONAL STATEMENTS OF SENATORS

NASA REDUCTION IN FORCE ACTIONS

Mrs. SMITH of Maine. I have received many complaints from employees of the National Aeronautics and Space Administration concerning NASA's administration, policies, and decisions in its reduction-in-force actions resulting from the reduction in research and personnel management funds for fiscal year 1971 as voted by Congress and approved by the President.

Over a month ago, I received a very comprehensive complaint in the mail from an unidentified source. I made copies of that complaint and sent them to the Chairman of the Aeronautical and Space Sciences and the Post Office and Civil Service Committees of the Senate and the Chairman of the Civil Service Commission.

Today, I received a report from the Chairman of the Civil Service Commission. The Senate Aeronautical and Space Sciences Committee is conducting an inquiry into the matter. I have no indication that the Senate Post Office and Civil Service Committee is looking into the matter.

Because I know that this is a matter of great personal interest to NASA employees affected by the reduction-in-force actions, I ask unanimous consent that the anonymous complaint be printed in the RECORD, to be followed by the report of the Chairman of the Civil Service Commission on that anonymous complaint. I call attention of these two statements not only to the Members of this body but to NASA employees as well.

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

NASA REDUCTION IN FORCE ACTIONS

(1) In effecting an overall reduction in personnel strength which the Congress was led to believe would amount to 200 employees at NASA headquarters, NASA has issued separation notices to 71 headquarters personnel.

(2) The majority of the RIFs were technical senior-level people—generally in grades GS–14/15. Little action was taken to reduce the large overhead in GS–16 and Excepted Positions. Only one GS–16 was separated and only one Excepted Position resulted in a separation.

(3) Policies and procedures which were prescribed to select personnel for separation appear to be arbitrary in some cases and are suspect with regard to integrity, good management, and the best interests of the taxpayer and the government. It appears that these policies will now cause unwarranted hardship and discrimination in some cases, and these have also resulted in the filing of a lawsuit against NASA management in the District courts. Some discrepancies and comments follow:

(a) No bumping in in same category. The CSC advised that NASA could permit bumping either laterally in the same sub-group category, or that bumping could be to lower grades as determined by NASA. NASA policy was not to permit bumping laterally. It is believed that CSC does not have the authority to permit NASA to disallow lateral bumping and has thereby usurped the rights of the individual as prescribed by Congress. People working for many years for this right now find they do not have them, and it appears that this policy is not responsive to the taxpayer by throwing away his investment in the employee. (It is reported that the CSC follows the practice of permitting bumping by a like grade within the same sub-group for personnel actions within their own office.)

(b) An example is a GS–15 (non-veteran, career status with 28 years service) being bumped by a GS–15 (veteran, career status with 5 years service.) This is proper and is permitted by law. However, the first GS–15 who is fully qualified is not permitted by NASA policy to bump other non-veterans laterally, and cannot bump downward because of lack of a position in his specialty. He will be separated in spite of his seniority and years of experience and service, while persons having less service are not separated. NASA personnel office officials have stated that to permit lateral bumping would "just cause too much trouble and chaos."

(c) Dr. Low in an official meeting has said that he desires to decrease the average age in the agency—wants bright, new men. Agency policy has been, in filling excepted positions, to hire preponderantly from outside instead of promoting from within. This has resulted in NASA being staffed with GS–15's who cannot be promoted; the grades below are therefore blocked and there is no room to bring in the new young men at the bottom. Since it was decreed that excepted positions could not be touched, and since it was decided to prohibit the lateral bumping procedure, about 70 percent of the employees being separated are in grades 14/15 in technical positions. The taxpayer is the loser with excepted personnel being retained who have relatively short periods of service, and by the loss of experienced, senior technical employees.

(d) The actual procedures for selecting the RIF personnel left much room for discriminatory and arbitrary action. Managers and supervisors were permitted to submit what amounts to two lists in order: (1) Cannot touch. (2) Can touch. This meant that supervisors could use the RIF exercise as a house-cleaning operation, and permitted personalities and other factors such as how an employee "stood with the boss" to be a criteria in his selection regardless of his qualifications and competitive rights. Supervisors were also permitted to claim undue interruptions. Letters from supervisors claiming this undue interruption were collected but were immediately placed in the hands of NASA's General Counsel, and nobody is permitted to see them. Many employees feel those being retained are less qualified than they. In view of the secrecy surrounding all this, it appears that the justifications for undue interruption retention may be false in some instances.

(e) Most employees were carried on "one-man lists" by job code in the personnel accounting system, rather than a grouping with others who have like qualifications. With generally every technical man being on a separate list, this meant that a supervisor could get rid of anyone at any time by abolishing the position, and knowing that the employee cannot bump anyone else. This is considered a particularly devious and unethical practice by many employees and is one of the subjects of the lawsuit against NASA.

(f) During the RIF proceedings, all persons who hold excepted positions, i.e., high paid, policy-making, serve-at-the-will-of-the-administrator jobs, were excepted from any separation considerations. Only one such is scheduled to leave the agency, a Dr. (Medical) Blacksheer who had previously announced that he was resigning effective September 10. Inclusion of his name in the RIF list gives the impression that he was separated because of the RIF, when in fact he was not. A Dr. Turnock has now been added to the list. Although the Mission Operations Directorate of the Office of Manned Space Flight was completely deleted with a determination it was no longer needed, and with the working staff being disbursed by separation or reassignment action, the Director and two GS–16's were retained. A Mr. Huff of the Advanced Manned Missions Program Directorate of OMSF is now the only GS–16 NASA headquarters employee who is being separated.

(g) The NASA Office of Public Affairs has had a Mr. V. C. Jones on the payroll since January 1969 as an "Expert/Consultant". Even though NASA headquarters has a RIF in process, the NASA Personnel Office has been instructed to convert his position to civil service status. Mr. Jones is 62 years of age.

(h) Although separation notices were handed to employees on August 17th to be effective October 1, as of August 28, two weeks later, NASA had not met its statutory obligation to make the Displaced Employee information available to the CSC, or completed the distribution of prescribed priority employment "stopper lists." This can result in unwarranted hardship to employees who

need this assistance for further employment without delay.

(4) The foregoing has been a distillation of some of the many unsatisfactory situations in which the agency is felt to have used the RIF exercise to houseclean instead of using the Performance Rating system. The net effect of this is: (a) To remove whomever the agency please and for any reason, with the employee having no recourse as would be the case if their supervisors and managers followed the prescribed procedures for "removal for cause", and (b) Those being removed but not because of any problems with their supervisors, are also being hurt. Prospective employers, checking back with NASA supervisors, find that some of the employees are being given very poor references, and they are wary of all the others because of it.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., August 24, 1970.

MEMORANDUM FOR ALL HEADQUARTERS EMPLOYEES

This is my fourth report to you on the current status of the reduction-in-force activity.

Last week reduction-in-force notices were given to 213 Headquarters employees. Our target was to reduce the Headquarters ceiling from 2056 to 1856, a reduction of 200. However, because of previous actions—restrictions on the filling of vacancies since early in FY 1970, an employment freeze starting on June 15, and extended discontinued service annuities for voluntary retirement—the actual number of separation notices was held to 71. These actions also minimized the number of reduction-in-grade notices resulting from "bumping and retreating." There were 62 offers of a position at a lower grade, and 80 reassignments at the same grade level.

Acceptances or declinations are due this week from those who were offered either reassignments or lower-grade positions. Each offer that is declined may result in one or more less-adverse notices issued to other employees who received initial notices. A less-adverse notice would either withdraw a separation notice or offer a higher-grade position than that previously offered.

I want to remind all of you who have been affected by the reduction-in-force to solicit the help of the Employment Assistance Center if you have not yet done so. Several agencies have already sent representatives to look for candidates to fill vacancies which they have. Last Saturday brief resumes on 71 employees who had requested assistance were mailed to 300 government agencies and private companies.

Based on reports I have received from the Centers, it appears that we will achieve our reduced overall personnel ceiling of 29,850 by October 1, as planned.

GEORGE M. LOW,
Deputy Administrator.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., October 6, 1970.

HON. MARGARET CHASE SMITH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SMITH: This is a further reply to your letter of September 3 regarding NASA reduction-in-force actions. The following paragraphs are numbered the same as the paragraphs in the memorandum that accompanied your letter.

(1) NASA officials tell us that there will be a reduction of some 200 in the number of people employed in the headquarters. The bulk of the reduction will be accomplished by voluntary separations such as retirements, resignations, and transfers. Only 71 employees had to be scheduled for separation by reduction in force. By the time of our inquiry there had been two more voluntary separations, and only 69 were scheduled for reduction in force. Each additional voluntary separation permits one more employee to be kept on the job.

(2) It is the responsibility of management officials of the agency to determine how to accomplish a necessary reduction in force. On the basis of their knowledge of the funds available and the importance of the various activities of the agency, they must decide the numbers and types of positions that can be abolished without disruption or with the least necessary disruption of the work assigned to the agency. The decision to make a number of cuts among the senior-level technical people reflects a responsible determination that they are no longer vital to the accomplishment of the work remaining to be done. Employees in other types of grades of work did not receive proportionate cuts because, in the judgment of the officials who had to make the decision, they will be of greater value to the remaining program.

The figures we have show that of the 69 now scheduled for separation, 5 are in grade GS–13, 29 are in GS–14, 23 are in GS–15, 1 is in GS–16, and all but 2 are in the competitive service. These represent responsible management determinations and are not subject to review by the Civil Service Commission.

(3) The selection of personnel to be separated may appear—to those selected—to be arbitrary and otherwise indicative of error. The basic decision to be made is on the relative importance of the various types of work the agency is doing. When these priorities are established, the next decision identifies the activities that can be reduced or discontinued without undue disruption. From this can be worked out the types, numbers, and grades of positions to be abolished in each activity. It is only at this point that the competing employees can be identified and those with the lowest retention standing marked for separation. This is not an arbitrary procedure.

(3a) Civil service regulations do not give one employee the right to bump another employee in the same subgroup—either in the same grade or in lower grades. The only bumping our regulations call for is against employees in lower subgroups. This is the arrangement by which veteran bumps nonveteran and career bumps noncareer. Our regulations permit the agencies to follow the practice of bumping within the same subgroup, but few agencies do, and NASA, for one, has never followed the practice.

(3b) The GS–15 nonveteran who is bumped by a veteran has no right under civil service regulations to bump another nonveteran. The person he would like to bump has a right not to be bumped, except by someone—such as a veteran—who has an enforceable right to take his job.

(3c) Given the necessity for reduction in force, which Congress has directed in this case, the sensible thing is to make use of whatever latitude the regulations allow in selecting the types of employees who are least valuable to the agency. Value is not determined by seniority or by experience in lines of work that are being discontinued.

(3d) The planning that must precede a reduction in force necessarily includes the establishment and adjustment of priorities. It makes sense for all levels of supervision and management to participate in the preliminary planning—with the final decisions and adjustments reserved to the top levels, where the final responsibility rests.

(3e) The grouping of employees into competitive levels—or the assignment of an employee into a one-man level—does not depend solely upon the qualifications of the employees. The employees in any competitive level will have similar if not identical qualifications, because they must be interchangeable with one another. But employees with identical qualifications may properly be in different competitive levels because their jobs are different. This may be illustrated by comparing stenographers and their jobs with typists and their jobs. All stenographers must type and take shorthand. Typists must type, but they need no shorthand. Some typists may be skilled in shorthand, but this does not put them in a competitive level with stenographers. They compete only with other typists.

This principle applies to technical personnel in this way: Similar qualifications are required for entry into a particular kind of technical work. Some of the people may, in fact, have identical education, training, and experience at the time of entry. As long as they work on identical jobs, doing the same kind of work, they are interchangeable with one another and would be in the same competitive level in case of reduction in force. But in the higher grades of technical, professional, scientific, and engineering work, it is not unusual for the individual job to become so technical and specialized that the employee is no longer interchangeable with other employees who have their own specializations within the same general line of work.

These and other considerations which enter into designations of competitive levels are discussed in some detail in the Federal Personnel Manual. For your convenience I am enclosing a copy of our instructions on competitive level.

(3f) This appears to relate to the voluntary separations which help make up the total reduction in the number of employees in the headquarters office.

(3g) The retention and conversion of an employee such as Mr. Jones in the Office of Public Affairs is not inconsistent with the separation of surplus employees in other lines of work.

(3h) The employees' concern is understandable when there is any delay in getting their names on the list for priority consideration. There has been no exceptional delay in this case, however. The names were put on the list on September 2, as soon as the necessary work could be completed.

(4) The only proper purpose of any reduction in force is to trim the agency to the proportions dictated by lack of work or funds. Once the extent of the trimming is determined and the parts to be trimmed are identified, management must follow the regulatory procedures in selecting the employees to be laid off. It does not seem realistic to accuse management of picking out employees who should have been separated for inefficiency or other reasons. The career employees who are separated in reduction in force are fully satisfactory employees who have a high priority for reemployment in their own agency and for placement in other agencies of the Government.

In summary, all of the information available to me indicates that NASA has done a thorough and conscientious job in planning and carrying out this reduction, but the propriety of any individual action will be subject to review and decision upon appeal by the employee through the regulator appellate channels.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

REORGANIZATION OF CONGRESS

Mr. METCALF. Mr. President, with approval yesterday by the Senate of a bill to reorganize the Congress, it is appropriate to review the circumstances that gave rise to this historic legislation.

The opening paragraphs of the final report of the Joint Committee on the Organization of the Congress describe the

dilemma of 20th-century legislators operating within a 19th-century organization.

Let me read them to the Senate:

The Congress of the United States is the only branch of the Federal Government regularly and entirely accountable to the American people. Indeed, it is the people's branch. Our constitutional system is based on the principle that Congress must effectively bring to bear the will of the people on all phases of the formulation and execution of public policy.

However, it is becoming more and more difficult for any collective decision-making entity like Congress to meet its responsibilities. A global foreign policy in an age of nuclear confrontation requires a timely and cohesive national response. Moreover, an increasingly complex society produces social, economic, and technological problems of staggering complexity.

Many contend that Congress no longer is capable of exercising initiative in the solution of modern problems. A fundamental reason for this loss of initiative is the lack of organizational effectiveness. Under the pressure of modern circumstances, the Congress has tended to delegate authority to the executive branch of the government. While Congress has not abdicated its role, it has permitted that role to become diluted.

Fundamental differences of opinion exist as to the proper role of Congress. Generally, the members of the joint committee agree that Congress should be maintained as a study and deliberative body, that the machinery of Congress must be modernized in order to provide for efficient handling of the Nation's affairs and that rule by majority must be preserved with adequate protection for the rights of the minority.

Mr. President, Senate approval yesterday by a vote of 59 to 5 of the Legislative Reorganization Act of 1970 culminates a 5-year effort in both Houses. The heroic builders of the first legislative reform act in 24 years and the second in the history of Congress are a part of the legislative history of the bill, in the hearings, the long executive sessions of markup and the debates that followed.

This tribute to their labor is merely a footnote to the history they themselves wrote.

Former Senator A. S. Mike Monroney, architect with the late Robert LaFollette of the 1946 Reorganization Act, served as cochairman with the Honorable RAY MADDEN, of the bipartisan Joint Committee on the Organization of Congress that was established in 1965 to study the "organization and operation of the Congress" and "recommend improvements." Together they heard the testimony of 76 Senators and Representatives and received the written statements of 30 others. They received the views of 123 public witnesses and built a hearing record totaling 15 volumes. Following weeks of executive sessions, the joint committee filed its report to the Congress and the special Senate Committee on the Organization of Congress, headed by Senator MONRONEY, was formed to draft a bill. Following additional hearings and markup, a bill was reported to the Senate in the 89th Congress. It was agreed that consideration of this complicated and comprehensive bill should be deferred to the next Congress and so S. 355 was made the first order of business in the Senate in 1967.

With infinite forebearance and competence, Senator Monroney saw the bill through 17 days of debate, 31 rollcall votes and the adoption of 40 amendments before final passage in the Senate on March 7, 1967, by a vote of 75 to 9. He was ably assisted on the Democratic side by the ranking Senate member of the committee, the distinguished senior Senator from Alabama, Senator SPARKMAN, in the 6 long weeks of Senate debate.

During all of this time, from the first hearing on May 10, 1967, until March 7, 1967, nearly 2 years later, the distinguished Senator from South Dakota, KARL MUNDT, worked side by side with Senator Monroney toward their common goal. He attended nearly every session of the two committees and with his long experience in both Houses brought to our deliberation special qualities of understanding and an informed judgment.

Senator CASE, the distinguished senior Senator from New Jersey, was a thoughtful, articulate member of a committee whose substantial contribution earned the respect of all.

The distinguished junior Senator from Michigan (Mr. GRIFFIN) was briefly a member of the joint committee prior to coming to the Senate. I am personally most grateful to him for his responsible and substantial assistance yesterday during our debate.

Finally, I want to thank Senator BOGGS, the distinguished junior Senator from Delaware, for his constant participation in the deliberations of both committees, for his participation in the debates in 1967 and for his great helpfulness yesterday as we saw legislative reorganization through its perhaps final stage before enactment. His contribution in behalf of his party and his cooperation are examples of the highest qualities of leadership.

I wish that the absent and former Members of the Senate might have been present yesterday to see the culmination of their work. The Legislative Reorganization Act of 1970 is truly a memorial to each of them.

WIVES OF PRISONERS UNDER GREAT PRESSURE

Mr. COOK. Mr. President, seldom in our history has so much pressure been exerted on a group of Americans to serve the devious cause of an enemy as has been put on the families of Americans being held prisoner by the North Vietnamese.

And never has any group withstood that pressure more nobly.

Many of the wives and mothers of the 1,400 Americans missing or prisoners of war do not know whether their husbands and sons are alive or dead. They do not know whether, if alive, they are well or wounded. They know little or nothing.

The Communists have done this deliberately; they have with callous intent prevented any communication directly between the men and their families. This uncertainty is a constant misery to the families.

Time and again Communists or their friends in this country have approached these ladies and suggested they could find out more about their husbands if they would just play ball—make propaganda statements in favor of the North Vietnamese or against the United States.

The women have steadfastly refused to do so. They have remained fiercely loyal to their men and to their Nation. The whole country owes to them the same loyalty and devotion. We must do all in our power to gain for the Americans being held prisoner more humane treatment and at least minimal direct contact with their families. We can do no less.

A LOOK AT THE NATION'S CAPITAL—A FORTRESS CITY

Mr. McINTYRE. Mr. President, a task force of the National Commission on Violence has warned that violence in our cities is increasing so rapidly that many of our citizens are being forced to live in residential fortresses or compounds. Our cities are becoming increasingly fortified. Violent crime and the fear of it is forcing our citizens to restrict their freedoms, to withdraw behind locked doors, to become, in effect, prisoners within their own homes. The commercial centers of many of our large cities are assuming a garrison-like character and large sections of these centers are shutting down at night because our citizens fear walking the streets at night.

Ironically, this disclosure comes at a time when officials in our Nation's Capital are declaring the crime wave has been broken, when merchants associations are making special efforts to encourage shoppers to come downtown at night.

Realtors, to save fine residential apartment projects, are fortifying—putting 6-foot-high steel fences around their projects, hiring armed security guards, and resorting to elaborate forms of electronic security. Some cannot survive even with this heightened security. Some contend that policies of the city and Federal governments are encouraging wholesale urban decay and promoting an increase in crime and violence.

The author of the Fortress City Report suggests that the total volume of violent crime may be actually increasing at a time when our officials report it is in decline.

If we are, in fact, developing modern counterparts to the fortified medieval city, the prospects are frightening. In the words of the staff report to the National Commission on the Causes and Prevention of Violence:

If present trends are not positively redirected by creative new action, we can expect further social fragmentation of the urban environment, formation of excessively parochial communities, greater segregation of different racial groups and economic classes, imposition of presumptive definitions of criminality on the poor and on racial minorities, a possible resurgence of communal vigilantism and polarization of attitudes on a variety of issues. It is logical to expect the establishment of the 'defensive city,' the modern counterpart to the fortified medieval city, consisting of an economically declining central business district in the inner city protected by people shopping or working in buildings during

daytime hours and 'sealed off' by police during nighttime hours. High-rise apartment buildings and residential 'compounds' will be fortified 'cells' for upper, middle, and high income population living at prime locations in the inner city. Suburban neighborhoods geographically removed from central city will be 'safe areas' protected mainly by racial and economic homogeneity and by distance from population groups with the highest propensities to commit crimes. Many parts of the central cities will witness frequent and widespread crime, perhaps out of police control. The fragile sense of community that enables us to live and work peaceably together in common institutions is in danger. Unchecked criminal violence can conceivably lead even to a collapse of the nation and society as we know them, or to a dictatorship to restore order by repression. Short of this extreme, the legacy of bitterness, distrust, and consequent violence among hostile groups will produce an increasingly weakened society. We must act now if the trend is to be reversed.

Mr. President, I suggest that these conclusions are alarming and deserving of our most serious consideration. As chairman of the Subcommittee on Small Business of the Banking and Currency Committee and a members of the Select Committee on Small Business, I am deeply concerned because of the impact this has on many small businesses.

A study of the application of the Fortress City theory in our Nation's Capital has been made into an hour-long television document by WMAL–TV, Channel 7. It is to be shown Friday, October 16, from 7:30–8:30 p.m. I recommend that Senators take the time to see this program as a prelude to our continuing consideration of conditions affecting most of of our citizens who live in or around our central cities.

THE LEGISLATIVE REORGANIZATION BILL

Mr. BOGGS. Mr. President, yesterday the Senate approved, with only five dissenting votes, the Legislative Reorganization Act of 1970.

This, I believe, was a most important action. The legislation will do much to modernize the operations of the Congress and enable it to keep up with the changing times.

There are those, perhaps, who do not think this legislation went far enough in its reform aspects. There are those, also, who believe it went too far. Both arguments, I believe, have some merit because in a 155-page comprehensive bill it would be impossible to please everyone on every item.

The bill, though, is an important vehicle for the improvement of congressional operations, and I am certain we soon will feel the benefits of its enactment.

It was my great pleasure and privilege to work closely with the Senator from Montana (Mr. METCALF) on this project. His knowledge of the legislation and his guidance were of immeasurable value to me and to this body.

Two members of the Joint Committee on the Operation of Congress were not with us yesterday on the final enactment of the bill; yet they deserve much of the credit for it.

The former Senator from Oklahoma, Mr. Monroney, was chairman of the Joint Commitee, and he worked long and hard on the basic legislation. The Senator from South Dakota (Mr. MUNDT) was the driving force behind reorganization and the chief sponsor of the original Senate version of the bill. This legislation, I believe, is a tribute to him.

Likewise, the other Senate members of the Joint Committee labored mightily to see this legislation come to pass. The Senator from Alabama (Mr. SPARKMAN) and the Senator from New Jersey (Mr. CASE) are to be congratulated for their efforts.

Finally, Mr. President, this legislation could never have been enacted without the interest, help, and guidance of the distinguished chairman of the Government Operations Committee, Mr. McCLELLAN, and without the aid of the leadership on both sides of the aisle.

PERSPECTIVES ON CAMPUS TURMOIL

Mr. BAKER. Mr. President, a country sometimes becomes so caught up in the emotionalism of a particular issue that it loses sight of the fundamental questions involved. This is much the case, I believe, with the issue of youth disenchantment in our society. On the one hand, there is a tendency among the adult community to lump all youth together as suddenly revolting against the established order. This is, of course, a great exaggeration. On the other hand, there is a trend among youth today to lump all their elders together as supporting a decadent, unjust, insensitive system. This is, I need hardly say, an equal exaggeration, growing out of the heat of an argument. In such a situation, then, it is exceedingly welcome and important to hear voices which speak with moderation, which cut through the emotionalism to the heart of the issues. Such a voice, I think, is that of Stephen Hess, National Chairman of the White House Conference on Children and Youth. In a recent speech before the American Association of Student Governments, for example, Mr. Hess touched upon some of the basic questions raised by campus dissent today. I think it important that Senators have this speech available to help them to see these matters more clearly, more calmly, and in a truer light than is generally available. I ask unanimous consent that it be printed in the RECORD.

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

AS THE SCHOOL YEAR BEGINS: PERSPECTIVES ON CAMPUS TURMOIL

(By Stephen Hess)

The American university as a social institution has been described by one irreverent observer as "the soft underbelly" of our society. Its vulnerability to attack from both inside and outside its ivyed-walls is well documented.

At its simplest, the university is a combination of human elements in a constantly volatile state.

Even when everything is going well, the regents, administrators, faculty and students must be viewed as an uneasy coalition whose interests are not always identical.

But everything is presently *not* going well on our campuses.

In June we concluded, what one university president termed, "the most turbulent year in the history of American higher education."

Perhaps some of you are now refreshed by the summer hiatus and ready for further battle. But for others I suspect the nerve endings that were last semester rubbed raw are still painfully exposed.

Nor, of course, can we anymore consider the university as some hermetically-sealed community of scholars seeking truth in splendid isolation. Rather we find, more than ever before, that the university is under constant surveillance by a less than enchanted collection of "outsiders"—alumni, donors, parents, legislators and taxpayers—all of whom have varying degrees of power to influence how the university might wish to govern itself.

What then does this outsider tell a "Presidents to Presidents Conference"? What advice can I possibly give to the student council presidents and university presidents who will be on the firing line as the new school year begins?

First, let me address myself to university presidents.

Many of you have probably heard the story of the distinguished professor who, overwhelmed by demands on his time—to be a consultant to government and business, to deliver a long-overdue manuscript to his publisher, to write a learned paper, to serve on a proliferation of administrative committees—decides to videotape his lectures. One day as he is passing his old lecture hall he hears his own voice, realizes that his class is in session, and decides to drop in to see how the course is going. When he opens the door he finds that the room is empty. From the front of the room he sees his face on the screen. But no students. Rather on each student's desk there is a tape recorder mechanically transcribing the professor's words.

Recently some 7,800 faculty members and administrators answered a questionnaire on what they viewed as the goals of American universities. The results were presented by a University of Minnesota professor (Paul V. Grambsch) to the American Political Science Association.

These findings, in my opinion, are both instructive and amazing.

The number one goal of the professors was "protect academic freedom," followed by: "2—increase or maintain prestige; 3—maintain top quality in important programs; 4—ensure confidence of contributors; 5—keep up-to-date."

These are fine goals. Very necessary. It is just that not one of them mentions *students*. Indeed, students did not directly figure in this exhaustive survey of university goals until goal #6, which was "train students for scholarship/research."

Goals 7 through 12 again make no mention of students. They range from "carry on pure research" (#7) to "carry on applied research" (#12).

Only when we get to goals 13 and 14 do we find "prepare students for useful careers and "cultivate students' intellect."

It is not very farfetched to extrapolate from this data that the supreme goal of many professional academics is a university without students!

Another recent survey, this one of almost 7,000 students conducted by Columbia University, concludes that most of the tensions and conflicts in junior and senior high school arise from the governance of the institution, not from social or national political issues.

Without belaboring the point, campus unrest began not with demands to get out of Viet-Nam, but with demands for academic reform.

This hardly detracts from the deeply felt

convictions that students today hold on national issues. It is only to say that for educators to blame all their woes on government or the larger society is to erect a nonintellectual smokescreen.

I have said in other speeches that "it is doubtful that we can truly attempt to rebuild confidence in our national institutions until young people come to believe that the government is seriously trying to extricate itself from Southeast Asia." (e.g.) Commonwealth Club, San Francisco, June 12, 1970.)

I would now like to say as a corollary that, in my judgment, it is doubtful that we shall ever have "peace" on our campuses until faculty and administration reorder priorities and restore the teaching of students to its rightful place as the core of higher education.

In an August report to the alumni on last spring's disturbances on his campus, Lincoln Gordon, President of The Johns Hopkins University, wrote, "Steps were already underway before April to face these questions of 'governance,' but a useful by-product of the spring disturbances was a *speeding up* of those steps . . ." (italics added). Here is an administration that was among the most progressive. Yet clearly the job of a university president is to do more than respond or react. You must initiate needed change—before legitimate "complaints" have become "demands."

You must come to grips with an educational system in which faculty avoidance of undergraduate teaching is often a goal to be fervently cherished; where the phrase "publish or perish" needs no further explanation; where there is still heavy reliance on standardized testing; and where educational content has changed little in the past 25 years.

To continue down the same old path means to me that the story of videotape teaching the tape recorder may not for long remain a joke.

I also have some equally unpleasant things to say to students, especially to student leaders.

It strikes me that judging from recent "demands," you are often abysmally ignorant of the constraints on and roles of university presidents, administrators and faculty. Often you make demands of the "wrong" people, people who have neither the power nor the responsibility to enact them. In other cases, where your demands are laudable your tactics are reprehensible and counterproductive.

For example, in some instances you make demands that are simply economically impossible. How many of you truly understand the present financial crisis in higher education? Discussing these financial problems recently, the President of Knox College said, "The Day of Judgment is upon us. You will note I did not forecast its arrival at a future time. It is here—now." Over 21 institutions have closed their doors since the academic year 1968–69. One small college in Missouri offered to rename the institution after any benefactor who would give it $5 million. There were no takers. When a school goes out of business no one gains—not faculty, not students, not community, not the Nation.

Today the costs of operating a college are rising dramatically. Inflation is one of the chief culprits. This is because large portions of college budgets are devoted to labor costs, which are particularly sensitive to inflationary pressures. The colleges are also being hurt by depressed business conditions, which adversely affects private and corporate giving.

But, equally true, campus unrest costs money: both because it takes money to pay for increased insurance, campus security, and physical damage to buildings, and, more importantly, because of retaliatory actions by state legislatures, such as the elimination of faculty salary increases in California, or by voters, such as the recent rejection of a major bond issue for construction at the University of Maine.

It is often your political demands that make it more difficult to realize your academic demands. You should be aware of this, and, of course, weigh the competing goals. It is thus incumbent upon student leaders, in my opinion, to understand and explain to your constituencies the distribution of power as it affects the university, as well as the primary, secondary and tertiary implications of possible actions.

Moreover, in giving your support to nonidentifiable and unrealistic demands and activities of the numerically minute extremist elements on your campuses, you must consider that you may well alienate those allies you have among the faculty. Many faculty members, particularly those in positions of greatest responsibility, recall the era of Senator Joseph McCarthy. All are sensitive to threats to academic freedom, particularly *their* academic freedom.

But very often campus confrontations never get to the point of assessing political or economic realities. Long before that can occur a process of obfuscation has usually set in.

When students want the university to help sponsor low-cost housing in the surrounding community the demand somehow becomes a call for the cessation of "urban imperialism." When minority groups seek more representation in admissions the issue too often becomes "the racists versus the people." And university administrators are quite adept at this technique also. Reasonable requests for university action are changed in administration statements into unreasonable demands that threaten the very life of the institution.

Even more distasteful is the tendency for some students, professors, administrators and trustees to attempt to use campus unrest for their own selfish purposes. Those who make statements whose sole purpose is to be quoted in the *New York Times* serve only to further weaken the university and make a mockery of both movements for reform and attempts to preserve the university.

Furthermore, you should be aware that the potential alliance between students and younger faculty members could also be seriously endangered by the current academic job market. For the first time in recent academic history, there are more young Ph. D.s than there are desirable jobs available. Consider when attempting to force a professor into a hard line position that he may now be choosing between displeasing a minority of students and alienating those who can determine what happens to his professional career.

At the present time my mandate is to organize a White House Conference on Youth, the first of its kind in the Nation's history. Please note: this is not to be a *students'* conference; it is a *youth* conference, which takes as its constituency all those between 14 and 24, some 40 million young people. You are probably aware that only 16 percent of this age group attends colleges and universities; 42 percent are working youth; 14 percent are primarily teenage housewives; 8 percent are in the military; many are poor and unemployed.

It has certainly been my experience that youth is not monolithic; young people have all sorts of problems, attitudes and hang-ups. Youth in the ghettos are less concerned with the governance of educational institutions than they are with how to find work without academic credentials; blue-collar youth are less concerned with "relevancy" than they are with what they perceive to be the coddling of those who reject traditional norms.

It is my job to see that all of these youth are represented and heard. Further, it is my job to give them—students and non-students—the opportunity to interact with the adult institutional leaders of this country. It is then my *hope* that out of this interaction will come a clearer understanding of what youth wants of the society in which it lives and of how youth can be given a greater voice in the processes from which evolve the decisions that affect their lives.

Let me state very selfishly that some recent actions of some students have made my job infinitely more difficult. In short, the voices of students have often drowned out the voices of youth. The attention lavished upon students by the mass media, particularly the "good" stories like the bombing of a building, have short-changed the amount of public acceptance that we can get for consideration of the problems of youth who are poor, youth who are not students, while, at the same time, such actions are actually increasing the polarization *between* youth.

I think, in conclusion, that what I am basically trying to get at is this message: moral fervor and idealism are necessary and understandable, but not sufficient. What students also must have is both trained intelligence and a heightened awareness of the forces that shape our social institutions, including the institution of higher education.

Hardly anyone seriously questions the need for change. Rather, what the presidents here assembled must direct your energies and wisdom to are the questions of how change is brought about in a democratic society, what changes are desirable, and in what order.

PULASKI DAY

Mr. WILLIAMS of New Jersey. Mr. President, during the American Revolution a Polish army officer and nobleman volunteered to fight with the American patriots against the British forces. Count Casimir Pulaski, although not an American colonist, offered his services in the cause for American freedom and gave his life for this country on October 11, 1779. In 1946, President Truman signed the legislation establishing October 11 as General Pulaski Memorial Day.

Fighting many battles with his "Pulaski Legion," he rapidly received great distinction and respect from his fellow officers. His participation in and loyalty to our struggle for independence earned him an esteemed rank of brigadier general and an honored title of chief of Cavalry. His contribution to American history was shortened, however, as fatal wounds sustained in the battle at Savannah in 1779, ended his brilliant career.

Since that time successive generations of Polish-Americans have continually demonstrated their support of the ideals of this Nation and have contributed greatly to our cultural and economic development.

Mr. President, Pulaski Day appropriately recognizes the major Polish contributions to the American way of life.

On October 4, the citizens of the city of Bayonne, N.J., dedicated Pulaski Street and the mayor, Francis G. Fitzpatrick, and councilmen, Dennis P. Collins and Alfred E. Dworzanski, and John J. Conaghan, Neil Desena, and John Fekety, proclaimed October 4, 1970, as General Casimir Pulaski Day.

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

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

PROCLAMATION BY THE MAYOR AND COUNCILMEN OF THE CITY OF BAYONNE

We do hereby ordain and proclaim General Casimir Pulaski Day, Sunday, October 4th, 1970, in memory of a great American's 191st anniversary 1779–1970.

The thousands of Hudson and Bergen County citizens of Polish descent have a right to be proud of Gen. Casimir Pulaski, who gave his life on Oct. 11, 1779, in helping the Colonists to throw off the yoke of England's tyrannical rule. The great service rendered by this famous son of Old Poland was recognized by Congress which passed a bill establishing that day as Gen. Pulaski Memorial Day. The legislation was signed by President Truman on June 21, 1946.

Carrying a letter of introduction from Benjamin Franklin, Pulaski arrived in Philadelphia in August, 1777. The letter he took to Gen. Washington read: "Count Pulaski of Poland, an officer famous throughout Europe for his bravery and conduct in defense of liberty of his country against the three great invading powers of Russia, Austria and Prussia, will have the honor of delivering this into your hands. The court here (Paris) has encouraged and promoted his voyage from an opinion that he may be highly useful in our service."

That he was of very great use became quickly recognizable. He joined Washington's embattled army in 1777 at the age of 29. He distinguished himself at Brandywine, where his gallantry gained his appointment as chief of dragoons with the rank of brigadier general. He fought at Germantown and in other battles in the disheartening winter of 1777–78. Later he formed an army known as the Pulaski Legion. These volunteers, many of foreign birth like himself, were badly decimated near Egg Harbor, N.J., when surprised by the British, who had learned of their presence through a traitorous deserter.

Later, he re-formed an army known as the Pulaski Legion. These volunteers defended Charleston, S.C., in May, 1779, but he was mortally wounded October 9 of that year leading an unsuccessful attack against the British in Savannah, where in 1824, General Lafayette laid the cornerstone of a monument to the valiant fighting Pole. Other monuments have since been erected to pay homage to his memory. New Jersey has paid tribute to him in the naming of Pulaski Skyway and Bayonne with the naming of Pulaski Technical High School.

The Public is invited to attend Dedication of Pulaski Street on Sunday, October 4, 1970 at 1 P.M. at Pulaski Street and Route 169, Bayonne, New Jersey.

FRANCIS G. FITZPATRICK,
Mayor.

EDITORIAL COMMENTS ON PRESIDENT NIXON'S ADDRESS AT KANSAS STATE UNIVERSITY ON SEPTEMBER 16, 1970

Mr. DOLE. Mr. President, many newspapers have commented on the meaning and effect of President Nixon's address at Kansas State University on September 16, 1970.

These editorials provide an insight to the thoughts of many Americans on the vital issues facing us today. These Americans may live in large urban centers or rural communities but they possess many similar qualities.

I ask unanimous consent that these editorials be printed in the RECORD.

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

[From the Kansas City Star, Sept. 17, 1970]

AT K-STATE NIXON BEGINS A NEW CONVERSATION WITH YOUTH

Yesterday at Kansas State University in Manhattan President Nixon made a valiant attempt to bridge the gap between the great and venerable authority of government, as personified in the presidency, and the irreverent questioning of youth.

Whether he succeeded hardly can be judged now. But at least the beginning has been made.

Mr. Nixon was talking about the anguish of a war which he hopes to end and the irrational dissent that can not only prolong that war but tear down the American foundation that can make a better world.

The best sense of his message—that this society has the mechanism in which ideas can be discussed and change occur peaceably—was underlined by the loud antics of a few exhibitionistic boors in the crowd of more than 15,000. The heckling was thin-voiced and rather pathetic. It emphasized the President's point that there are those who follow the law until they are defeated, and then insist on knocking down the whole structure of democracy.

Yet even at K-State—which Mr. Nixon described as the heart of America in his paraphrase of an Eisenhower speech—there were those seeds of dissent, and it must be recognized that on other campuses the reception would have been far less friendly.

What happened at Manhattan was almost a casebook example of how the few can disrupt the best-laid plans of the many. On the television screen, at least, the catcalls of rude disorder seemed to come across with more effect than may have been apparent in the field house. Yet the net result was only to emphasize what the President was saying: That there are those who are afraid to hear the opinions of others; who resort to bombs and arson because they cannot persuade; who will drown out debate with mere noise. If the dissenters weren't so self-centered and swollen with their own sense of making an imprint on events, one would almost suspect that the Republican national committee had hired an anti-Nixon claque to bring in a tide of sympathy for the President.

Mr. Nixon's words really were not new, and their meaning may have been diluted by his introductory remarks on the importance of football in the structure of higher education. But they were important words. He said that in a democracy you play by the rules of the game and that if you lose, that doesn't mean that democracy is a failure. You might even ask yourself whether the other fellow was right. He said that at some of our great universities "small bands of destructionists have been allowed to impose their own rule of arbitrary force." And he is right. But this has not really happened at many schools, despite occasional spectacular outbursts, and those small bands of destructionists are not listening to the President anyway.

It may have been in this election year that Mr. Nixon was speaking to the older generation that will be going to the polls in November as well as to the students in Ahearn field house. He did not tell the young generation *what* to do so much as he told them what *not* to do—a parental admonition with which most of the President's contemporaries can agree.

But that is not the way to lead young people or to bring them together for a cause. The President opened a promising dialogue at Manhattan but his advice must be more than a list of "thou shalt nots" if he wants them to listen.

[From the Kansas El Dorado Times, Sept. 18, 1970]

SMASH HIT AT MANHATTAN

President Nixon's appearance and address kicking off the Landon Lecture Series for this year at Manhattan was a knockout.

All reports from that affair on Wednesday were the same, namely an address that took its hearers by storm, a deeply absorbed and respectful student body and the creation of a beneficial effect that should leave its mark on Kansas and the rest of the state.

Keynote of the address probably was contained in the following paragraph—though all of it was quotable and memorable: "The time has come for us to recognize that violence and terror have no place in a free society, whatever the purported cause of perpetrators may be. In a system like ours, which provides the means for peaceful change, no cause justifies violence in the name of change."

The President received six spontaneous standing ovations, which may be a record for Kansas as well as elsewhere. There were a few hecklers and "antis" in the crowd—a possible fifty out of an audience that crammed the capacity of Ahearn field house but the shouts and obscenities of these few kept well in check. It was not a day for revolutionaries at Kansas State.

The President said that education is facing its "greatest crisis" in the history of America. And then he introduced a note that is seldom heard in all the debates and discussions of the moment. He hinted that much of the support (for education) comes from Americans who have not had the advantages of higher education, and said: "It is time for responsible university and college administrators, faculty and student leaders to stand up and be counted. Only they can save higher education in America."

The President's appearance on the already successful Landon Lecture Series gave that institution a boost which will dignify all its future course. Moreover, he gave the people of Kansas the benefit of his own courage and optimism for the future—flashes of the spirit the great common people of this republic must have to solve the myraid problems which lie before them.

[From The Kansas El Dorado Times, Sept. 18, 1970]

ALL HAIL TO K-STATE

Standing on an equal parity were the clear tone of the President's address and the altogether respectful behavior of Kansas State University students in that extraordinary gala at Manhattan Wednesday.

It was more—much more than a number on the lecture series. It was a confrontation and a communication between more than fifteen thousand students of a great university and the executive administrator of their republic. It found both guest and host in a rare mood of accord—crowning the occasion with its compatibility and charm and setting an example to be followed on a national scale.

The great majority of students gave President Nixon most polite and decorous attention. They laughed when he pointed to his purple and white necktie (the school colors and a gift from Kansas congressmen who accompanied him) and admitted ruefully that the program chairman had told him these shades would clash on television with the blue suit he was wearing. They gave him a spontaneous standing ovation six times during the course of his address. They paid no attention to the rude shouts of the few hecklers who were herded in the balcony,

and they gave him the most appreciative ovation of all when he said:

"The destructive activists of our universities and colleges are a small minority but their voices have been allowed.

"My text at this point reads: 'The voices of the small minority have been allowed to drown out the responsible majority.' That may be true in some places—but not at Kansas State."

All of us in Kansas, no matter what our university or college affiliation may be, will cherish that accolade to Kansas State and to the prairie state which stands squarely behind this institution which typifies so well its own character.

[From the Kansas Fredonia Wilson County Citizen, Sept. 17, 1970]

NIXON VISIT

Maybe the hecklers at President Nixon's speech at Kansas were valuable—if obnoxious—addition to the mess of misinformation about student attitudes in the United States. For it was abundantly clear to all viewers and listeners that the main body of students were attentive, polite, and found the small minority of the hirsute unwashed as disgusting as everyone else.

It is time that we quit giving so much time, space and tongue-clacking over the boors, and a little more credit to the students who are interested in their rights, too. . . . but are civil about it.

[From the Kansas Council Grove Republican, Sept. 16, 1970]

SEVERAL STANDING OVATIONS

Nixon received a standing ovation when he stated, "It's time for responsible university and college administrators, faculty and student leaders to stand up and be counted . . . only they can save higher education in America."

He also received a standing ovation when he mentioned there should be a willingness to listen to what others have to say without trying to shout them down.

After asserting that "The destructive activists at our colleges and universities are a small minority," many of the President's listeners rose to applaud.

Once the cheering had died down, Nixon said his prepared text at that point would have him say that the minority has been allowed to drown out the responsible majority. Departing from his manuscript, he went on, "That may be true in some places, but not at Kansas State."

[From the Kansas Burlington Daily Republican, Sept. 16, 1970]

A GREAT DAY

This has been a great day for Kansas, for Kansas State university and for Alf M. Landon, former governor of Kansas, with President and Mrs. Nixon, Kansas Senators Dole and Pearson and the Kansas congressmen in Washington guests at the Landon program at KSU. The President wore a purple tie for the occasion and received a tremendous acclaim from the students.

ONE HUNDREDTH ANNIVERSARY OF TEMPLE B'NAI JEHUDAH IN KANSAS CITY, MO.

Mr. EAGLETON. Mr. President, Friday, October 2, Temple B'nai Jehudah of Kansas City, Mo., celebrated its 100th anniversary. The occasion marked a milestone in the history of the Jewish community of Kansas City, as B'nai Jehudah is the oldest and largest congregation in the area. Its members have made significant spiritual, moral, and civic contributions to the city of Kansas City, the States of Missouri and Kansas, and the Nation.

I ask unanimous consent that three articles detailing the history of Temple B'nai Jehudah from the Kansas City Jewish Chronicle of October 1, 1970, be printed in the RECORD at this point.

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

THE MEN WHO FOUNDED B'NAI JEHUDAH

Who were the 25 men who founded Congregation B'nai Jehudah on October 2, 1870?

The record no longer exists, but it may be said with assurance that they were among the following who are known to have joined the congregation's ranks within the first 2 years:

Isaac Bachrach, Wolf Bachrach, Abraham Baer, Frederick H. Baum, Moses Baum, Joseph Cahn, Bernhardt Davidson, Adolph Dittenhoeffer, Charles Dobriner, Benjamin A. Feineman, Adolf S. Fiersheim, Bruno S. Fiersheim, Bernhard Ganz, Henry Ganz, Herman Ganz, Morris Gershel, Manheim Goldman (resident of Liborty, Mo. from 1852), Julien Haar, Charles Haller, Louis Hammerslough, Martin Josephson, Henry Kahn, Isadore Kamsler, Isaac A. Levy, David Loeb, Joseph Lorie, Bernard Meyer, Henry Miller, Max Rice, Herman Rosenthal, Louis Rothschild, Robert Sachs, William Schloss, Bernhard Schradsky, and Moses Waldauer.

Where did they originate? Julien Haar may have been the only one among them who was born in the United States. Bernhardt Davidson was of Polish birth (as was Rev. Marcus R. Cohen, B'nai Jehudah's first "officiating minister").

The others who have been identified all hailed from Germany, or had emigrated from lands under German cultural influence (Austria, Bohemia, Hungary, and Alsace-Lorraine), although several of the names suggest origins in Eastern Europe.

What were their occupations? At the time, 13 of the 35 men listed above were proprietors of men's clothing stores, 4 were tobacconists, 3 operated dry goods stores, one was a wholesaler in liquors, one had a butcher store, and one was a saloon keeper. The remaining 12 were store clerks, bookkeepers, or cigar makers. Only a few of them were poor, a majority having attained "middle class" status by 1870.

MAZEL TOV TO B'NAI JEHUDAH!

The Kansas City Jewish community experiences an important "first" this weekend, with the celebration Friday evening of the 100th anniversary of the founding of Temple B'nai Jehudah. It is the first centennial observance in our Jewish community, and a notable *Simcha* for all.

Jews have been part of the Kansas City scene for some 130 years, since the opening of the Cahn & Block general store at Westport Landing in 1840. The first indication of a Jewish communal organization was evidenced 7 months after the Civil War ended, when *"The Israelite,"* an Anglo-Jewish weekly published in Cincinnati by Rabbi Isaac Mayer Wise, carried an item which announced the formation of a "Hebrew Benevolent Society of Kansas City," with a cemetery purchase and sporadic High Holy Day services.

An influx of new arrivals and new leadership gave impetus to the formation of Congregation B'nai Jehudah during the High Holy Day season in 1870. Benjamin A. Feineman, who had previously been a founder of Congregation Adath Joseph in St. Joseph, Missouri, became the first president of B'nai Jehudah in 1870, and served for a total of 10 years. The new congregation elected Reverend Marcus R. Cohen as its first spiritual leader.

From the very beginning, B'nai Jehudah's aim was "Progress and Reform," with services patterned along the lines of the Reform prayerbook, *"Minhag America."* By 1873, the new congregation had grown to 40 members and became a founding synagogue of the Union of American Hebrew Congregations. For almost two decades, B'nai Jehudah was the only Jewish congregation which conducted regular weekly Sabbath services here.

Congregation B'nai Jehudah achieved early and lasting prominence through its rabbis and lay leaders who were, and are today, in the forefront of Jewish and secular community life, both locally and nation-wide. Its present comprehensive program of worship, education, cultural pursuits and social action is a model of strength and vitality.

The celebration of the 100th anniversary is a cause for rejoicing for the entire Jewish community here. It is with confidence and religious enthusiasm that Congregation B'nai Jehudah enters its second century of service to its membership and the community. We pray that it may continue to grow "from strength to strength."

B'NAI JEHUDAH'S MARCUS R. COHEN WAS KANSAS CITY'S FIRST RABBI; KNOWN AS "THE MOHEL OF THE WEST"

"The Rev. M. R. Cohen of Chicago," as Temple B'nai Jehudah's first spiritual leader was identified in the press notice of the congregation's founding, enjoyed a varied and colorful career during his 20 years of Kansas City residence.

Frank J. Adler, the Temple's administrative director whose centennial history of B'nai Jehudah is to be published in 1971, has learned from extensive research that Marcus R. Cohen was born in Poland and was said to have come to America by way of Australia.

He pursued the calling of a Mohel, and he was developing a reputation as "a good operator, quick and self-possessed," in the spring of 1870 when he opened an office in Chicago.

Cohen was brought to Kansas City in September, 1870, to officiate at the Bris of the first-born son of Joseph Cahn, a local men's clothier who headed the "Hebrew Benevolent Society of Kansas City." This was a burial society which the community's pioneers had formed in 1865; it was from its ranks that B'nai Jehudah emerged in 1870 to serve the needs of the living.

Cohen remained in town after the Cahn Bris to conduct High Holy Day services. B'nai Jehudah elected him at its organizational meeting on the Sunday following Rosh Hashana, and re-elected him in 1871 by unanimous vote. But he resigned a few months later and advertised his availability "in town and country" as "The well-known, practical and skilful Mohel of the West" and as a dispenser of "medicated vapor baths."

Anglo-Jewish press notices during the remainder of the 1870's and throughout the 1880's attest to his Mohel services in Topeka and Marshall, Missouri, as well as in Kansas City. Cohen secured an M.D. degree in 1881 and maintained a physician's office thereafter in downtown Kansas City.

Cohen's English-born wife, Julia, served as the first secretary of the "Hebrew Ladies' Relief Society" which was formed as a B'nai Jehudah auxiliary during the congregation's first year (it was the community's principal charity for more than a decade).

Mrs. Cohen retained office in the Temple's affiliate society until her death in 1874, even though her husband had become estranged from his former flock. Upon her passing, a handful of Orthodox members of the community started a Chevra Kadisha in her memory and installed her husband at its head. He conducted irregularly scheduled worship services for this group during its 3-year existence.

Although this Chevra Kadisha passed from

the scene in a short time, its demise did not conclude Cohen's activities as a sometime functionary at worship services here. The "American Israelite" of Cincinnati reported in the fall of 1883 that "Dr. M. R. Cohen" had led a High Holy Day minyan under the auspices of the "Chevra Bikur Cholim" of Kansas City.

This referred to a society which had purchased cemetery ground at 18th and Porter (now Cleveland) the year before. Its 1883 High Holy Day services were the first to receive mention in Anglo-Jewish papers. Since the present Congregation Beth Shalom traces its origin to the Chevra Bikur Cholim, Marcus R. Cohen could lay claim to having been the first rabbi of both B'nai Jehudah and Beth Shalom Congregations.

Cohen apparently was again regarded as part of the Reform group when he died in 1890, at 63. B'nai Jehudah's Rabbi Henry Berkowitz eulogized the "sterling worth" of his life at the funeral which was held on the eve of Rosh Hashana—exactly 20 years from the day on which he had first conducted worship services in Kansas City.

Cohen is buried in the B'nai Jehudah section of Elmwood Cemetery, next to his wife, on a lot which had been personally donated to him by B. A. Feineman, the congregation's first president.

The inscription on the grave marker perpetuates the memory of "M. R. Cohen, First Officiating Minister of the Cong. B'nai Jehudah"—the first religious functionary for the Jewish community of Kansas City, 100 years ago.

LABOR PRIORITIES IN LATIN AMERICA

Mr. CHURCH. Mr. President, Mr. Joseph A. Beirne, the president of the Communications Workers of America, is not only one of the Nation's leading trade unionists, but is also an authority on the development of free labor unions in Latin America.

He recently spoke at Georgetown University, where a class of trade union economists from various South and Central American nations had just completed a training program under the auspices of the American Institute for Free Labor Development. In his speech, Mr. Beirne emphasized 10 points in the form of priorities for labor in the 1970's. They warrant our careful attention.

Mr. President, I ask unanimous consent that the complete text of Mr. Beirne's address be printed in the RECORD.

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

LABOR PRIORITIES FOR THE AMERICAS IN THE SEVENTIES

(Speech by Joseph A. Beirne)

What kind of America will we be living in at the end of the 1970's? When I say "America," I mean the entire Western Hemisphere! Projecting the rate of development of communications, and the population growth of our continents, we are bound to be drawn more closely together. We will undoubtedly be sharing, even more than today, each other's problems and achievements.

What kind of America will be be living in? Hopefully, most of us here today will be around. It is safe to say that most of you, future labor economists of Latin America, will be in the midst of your careers. Your performance could have a great deal to do with the kind of America we will live in at the end of this decade.

What kind of Latin America will there be in 1980? Right now there is a wave of discontent throughout the continent. There is the disintegration of old patterns without enough constructive efforts to fill their place. We see the emergence of new forms of revolutionary nihilism. These disturbing events cause some to fear that Latin America in the next thirty years may succumb to the kind of social psychosis that has gripped Communist China recently. In that event, some Latin American nations could become ominous threats to other countries. Certainly, such a development would endanger the existence of a civilized society in Latin America itself.

There is another possibility, however. That is the prospect of a Latin America, true to its great cultural heritage, emerging from its present difficulties a dynamic, progressive New World. If so, Latin America will be among the global leaders in lifting humanity to new higher levels of spiritual and cultural, as well as material, attainments.

Unlike the Marxists, we of the free labor movements of the Americas believe that the course of history *can* be influenced by determined human efforts. We do not accept the *diamat* theory that history is like a pre-set machine running its inexorable course.

We have seen the progress made by the free labor movements of Latin America with the cooperation of the AFL–CIO and the American Institute for Free Labor Development during the past eight years. We are confident, now that the foundation has been laid, even more significant results for the whole society will be achieved in the decade of the seventies. This is not simply a pious hope. We are determined, and our Latin American brothers share this determination, that effective labor programs during these coming years will set Latin America's course toward more substantial social and economic progress, with individual freedom, in an open society.

The decade just ended may well have proved *inconclusive* with respect to Latin America's future path. The labor leaders of all the Americas must succeed in making the seventies a decade in which our countries will *conclusively* move in the direction of social justice with freedom!

OUR RECORD TO DATE

In cooperation with our Latin American labor colleagues, the American Institute for Free Labor Development (AIFLD) has been taking stock of the situation of the working people of Latin America, past and present. We have assessed our eight-year old program, reaching into more than twenty countries of the Hemisphere. As you all know, the Institute's goal is to help our brothers in the countries to the south to help themselves build stronger and more viable democratic labor movements. All of us, north and south, see such growth of the democratic worker organizations as essential not only to the raising of living standards, but to the emergence of increasingly democratic institutions and societies.

It is an article of faith of the free labor movements in all the Americas that free trade union organizations can thrive only in the framework of a democratic society and, conversely, that a society can not be free unless its workers are at liberty to organize themselves, freely bargain with employers and strike! This viewpoint has received the backing of all recent U.S. administrations, including the present one, and of the Congress of the United States, as reflected in the foreign assistance legislation of the last eight years. It has also received recognition in the declarations of the labor ministers of the Hemisphere in the conferences of Cundinamarca, Caraballeda and in Washington.

LOOKING AHEAD

The main purpose of this year's AIFLD review of its past record and the present labor situation has not been, however, simply to assess the amount of progress made to date. Rather, it is to look ahead and delineate the labor priorities for the Americas in the crucial decade of the seventies.

The past eight years of AIFLD collaboration with our brothers in the other Americas, seen in retrospect, have been years of groundbreaking, the laying of foundations, and some experimentation. Nothing quite like this attempt has ever been tried on this scale before. In a multifaceted joint effort, we have sought to accelerate the growth of democratic labor institutions from continent to continent, country to country, union to union, and working brother to working brother!

An examination of the detailed information in our survey shows that the overall effort has been successful, although there has been a wide divergency among sectors in the degree of progress made.

On balance, it is clear that much remains to be done, despite the accomplishments of the last eight years. This fact does not surprise or dismay our Latin American friends, the AIFLD or AFL–CIO. We are too conversant with the gradual evolution of the labor movements in Europe and the United States to expect many far-reaching structural changes to take place swiftly in the societies of developing countries. In fact, it is the beginning of wisdom in this field to recognize that solid and lasting growth can be achieved only at a deliberate and sure pace. Any growth of social institutions, experience shows, is a complex process involving many interrelated changes in structure and attitudes as well as accompanying alterations in the entire surrounding social environment.

Progress can be too slow in coming, however! The very stagnation gripping so many of the developing countries of the Hemisphere is no doubt responsible for so-called revolutions of several kinds which themselves constitute, ironically, major obstacles to real transformations of conditions in ways that will truly benefit the peoples of those countries. Such "revolutions," generally speaking, either fall short of bringing any substantial improvements—amounting to no more than *coups d'etat*—or, as in Cuba, uproot the good with the bad and impose alien dictatorial systems even more tyrannical than any in the past, and far more difficult to remove!

The most ominous tendency in many of the countries, whatever their political leanings to left or right, is a tendency toward increased state-centralism and a growth of stifling controls over the lives of citizens. These later-day forms of paternalism stunt the evolution of the autonomous forces and institutions which provide the healthy and fruitful diversity characteristic of open societies.

Despite some setbacks, however, there are some hopeful signs. There are, fortunately, freedom-loving elements in the societies of this Hemisphere which are struggling to maintain their birthright of liberty and opportunity, and to make their own unique contributions to social progress. In the forefront of these countervailing forces that keep alive the hope of pluralistic economic, social and politica: democracy, are the free labor movements.

PRIORITIES FOR THE SEVENTIES

The better to achieve our common goals, we of the American Institute for Free Labor Development, in collaboration with the Inter-American Organization of Workers (ORIT) and all of our trade union brothers of the Americas, have formulated a set of ten priorities for the decade of the seventies. These priority objectives are the following:

(1) *A better quality of life in every respect for the working people of the Americas.* By this we mean substantial gains in wages, salaries, and fringe benefits, undiluted by excessive inflation; greater job security and

improved retirement and disability benefits; better housing, schools, food, medical attention, and education; and greater opportunities for cultural activities and recreation.

(2) *A maximum contribution by free labor to pluralistic economic development and evolution of democratic institutions.* It is clear that a better quality of life for the workers cannot be won without a greater voice for free organized labor in economic and social planning. Labor must be a primary force for the establishment and growth of governmental and non-governmental bodies essential to a democratic society.

(3) *The growth of increasingly effective free trade unions, federations, confederations and regional labor organizations.* It is no less clear that the significance of labor's role in furthering the interests of the workers and helping to shape economic and social policies will depend upon the strength of free labor organizations, from locals to national confederations, and upon the drive and ability of their leadership.

(4) *The broadening of the free labor movements to include more of the agricultural and unorganized workers.* The North American free labor movement, as well as those of the other Americas, recognizes more and more the importance of the farm workers in the labor force. In both parts of this Hemisphere, we are working hard to organize agricultural workers into rural trade unions. The beneficial results of this for the total strength of the labor movements will be far greater in the countries to the south, because of the larger proportion of rural workers. At all costs, the free labor movements of the entire hemisphere must intensify their efforts to bring into their ranks workers of every kind. This will also help to minimize harmful friction between urban and rural workers, the skilled and the unskilled, and the blue and white collar workers.

(5) *Continued improvement in collective bargaining capabilities, union structure, leadership, and dues collection.* While union growth is desirable, by itself it will not result in important gains for organized labor without improvements in negotiating skills, the strengthening of union structures, more effective dues collection, and the growth of leadership capabilities among those who hold positions of responsibility and trust in the free labor movement at all levels. The whole concept of free collective bargaining between organized workers and their employers, whether public or private, as the cornerstone of workers' freedom, must be promulgated everywhere!

(6) *Continued growth of leadership training and other education programs.* Encouraged by the results of eight years of pioneering work in this field, with long-term dividends still to be reaped from such efforts, AIFLD plans to continue to work closely with the Inter-American Regional Organization of Workers (ORIT) and the free labor movements of the Americas in expanding and increasing still more the effectiveness of the many types of labor education programs now in progress.

(7) *Continuation and expansion of local and community service projects.* In this field, too, AIFLD will continue to collaborate with the free labor movements of the Hemisphere in the planning and execution of social and community service projects that respond to the needs of the membership, attract new members, and inspire self-confidence among the workers and their leaders. These projects give union locals the opportunity to learn to administer and finance their own projects and programs. They also earn the unions prestige as well as greater respect from employers, governmental authorities and other significant sector of the community. Such community development by free trade unions is the best example of grass-roots institution building. To the wide variety of social projects activities of the past, new types of projects and programs will be added during this decade, including new types of workers and campesino credit institutions and cooperatives, a growing number of child-care centers with increased emphasis on child development, medical and dental services for rural as well as urban workers and their families, consumer and environmental protection for the working people, and legal aid and counseling, among many others.

(8) *Intensification of skill-training programs, job placement services and other manpower programs.* In the light of the success of the skill-training program which AIFLD assisted the free labor movement of Guyana in developing over the past five years, the Institute is planning to respond to requests from other free labor movements in the Hemisphere for skill-training, job placement and other manpower activities. These will be developed in response to local labor market conditions and the demand for new or improved skills.

(9) *The strengthening of trade union capabilities in economic research and analysis, and the supply of economic and legal counseling services.* Seeking to help the free labor movements of the Hemisphere in developing their own capabilities in the fields of economic research and analysis, drawing upon the talent of their most gifted members where possible, the Institute will continue with its training programs for labor economists, which has just graduated its fourth class at Georgetown University. With such growing capabilities, the Hemisphere labor movements can bargain with employers on a more equal footing, exercise a greater influence on the drafting of social legislation, and participate more effectively in national and international economic and social planning councils and other high-level bodies. As they develop their own expertise, the free labor movements will be less dependent upon data and counseling from non-union sources, and can thus better protect and further their interest and autonomy in an increasingly complex, competitive and technological world.

(10) *Improved relations with employers, governmental authorities and other sectors with which labor must deal; and improved trade union capabilities in the use of public media.* Experience in several countries has shown that increasingly well organized democratic unions under responsible leadership have, generally, been able to deal with employers, and even governments, from a position of equality. This is partly the result of education on both sides, a growing respect on the part of management (and government) toward organized labor's role and prerogatives, and a growing understanding on the part of labor's leadership of the economic and administrative realities of the business world. This achievement of a better dialogue is not always easy to attain, and it certainly cannot be won by simply surrendering to management demands. On the contrary, fair-minded but determined trade union leaders have been able to win not only respect, but important concessions from management. These include not only substantial increases in wages, but such significant gains as grants of land and financing for worker-owned housing, facilities for worker-operated cooperatives, day-nurseries, receation centers and other social benefits for the workers. Improved dialogue with governmental authorities, the press and other sectors of public power and opinion are also high priority goals for the free labor movements. Labor has in many instances gained less public support for its just goals than it might because of insufficient experience in making use of the public press and other media. AIFLD will cooperate in programs designed to improve the public relations expertise of free labor movements of the Hemisphere.

LABOR PROGRAMS AND THE ADMINISTRATION'S AID POLICY

On September 15, President Nixon proposed to the Congress of the United States a major transformation in U.S. assistance programs. We shall be commenting on this message and its implications at the appropriate time. For the present, it will suffice to say that the President's recommendations for multilateralization of assistance to the lower income countries may be an inevitable reorientation. Its heavy emphasis on aid funneled through governments and an investment banker's approach to the problems of development, however, could spell disaster for the *social* dimensions of progress in the recipient countries and the reinforcing of popular elements, such as the free trade unions, as catalysts for evolution toward a more open society.

We welcome the President's phrase concerning the third purpose of U.S. foreign assistance, which he identifies as "the building of self-reliant and productive societies in the lower income countries," and his references to "economic and *social* development" and to the opportunity offered by foreign aid "to help others to fulfill their aspirations for justice, dignity and a better life." But we note that the role of labor is not specifically mentioned in the President's message.

We firmly believe, that the attainment of these goals mentioned by the President requires the following:

(a) A real, not token, participation by free labor in the policymaking of both the U.S. and multilateral development assistance programs;

(b) continued funding at a realistic level of U.S. bilateral programs designed to strengthen the democratic labor movements of the Hemisphere; and

(c) as called for by the AFL–CIO, at least 1% of our Gross National Product to be devoted to foreign assistance programs.

Our *Labor Priorities for the Americas in the Seventies* are a commitment to continue and expand the AFL–CIO and AIFLD's pioneering effort to achieve more justice, dignity and a better life for the great mass of the population in the lower income countries of the Hemisphere. And we *do not* intend to do this by waiting for benefits to trickle down from governments, but by building a more dynamic and democratic society from below through the action of the working people organized in their free trade unions!

Our top priority for the seventies, as always, is for a heightened quality of life for the individual man, woman and child throughout the Americas, and we shall marshall every resource available in striving for that goal!

THE BALTIC STATES AND EUROPEAN SECURITY ARRANGEMENTS

Mr. PERCY. Mr. President, Vaclovas Sidzikauskas, the distinguished chairman of the Committee for a Free Lithuania, headed the Lithuanian delegation to the convention of the Assembly of Captive European Nations in New York City in mid-September 1970. At the opening session Mr. Sidzikauskas made a significant address in which he expressed his deeply felt views on possible European security arrangements as they affect the future of the Baltic States.

Whether one agrees or disagrees with Mr. Sidzikauskas' opinions, I am sure that all will profit from considering them.

I ask unanimous consent that Mr. Sid-

zikauskas' speech be printed in the RECORD.

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

ADDRESS BY VACLOVAS SIDZIKAUSKAS

Mr. Chairman, Distinguished Guests, Fellow Delegates, all major international events affect to a greater or lesser degree the captive part of Europe and the policies of the regimes imposed upon the nations of East-Central Europe by the Soviet Union. But the most significant developments on the international scene during the last session of our Assembly, which are of direct and vital interest to the captive nations of East-Central Europe, undoubtedly were: (1) The attempt of the USSR Government to bring about the normalization of the political situation in East-Central Europe on its terms, that is, the consolidation of Soviet colonial empire by means of bi-lateral agreements between West Germany, on one side, and the Soviet Union, Poland and Czechoslovakia, on the other, and the convocation of the Moscow-proposed European Security Conference; (2) Federal Republic of Germany's new "Ost-politik," as initiated and promoted by Chancellor Willy Brandt.

The announced gradual disengagement of the United States in Asia and Europe has to some extent encouraged the Soviet Union to grasp the given opportunity for activization of her policy in Europe.

As the drift toward a Soviet-proposed European Security Conference gathers speed, the spectre of high-level talks at which the rulers of the Kremlin and their satellites would take part, is again haunting the minds of the captive Lithuanian people. Eager as they are for a negotiated settlement of their problem in freedom and justice, they cannot dismiss from their minds the Molotov-Ribbentrop pact of August 1939 and the secret protocols of August and September of the same year attached to this pact.

The problem of Lithuania, as well as that of Latvia and Estonia, victims of Soviet-Russian imperialism, is part of the unsolved legacy of World War II. The Lithuanian people have hoped that a peace conference, similar to that which ended the first world war, would have the authority and the power to reestablish in East-Central Europe legal order and peace based on international treaties and wartime and postwar commitments and pledges of the belligerent states.

The Soviet aims are obvious. They are striving to secure the international recognition of their conquests in East-Central Europe and thus to solidify their colonial empire founded on the suppression of liberty of 100 million Europeans. It is also their goal to secure their European flank for the eventual aggravation of their relations with Mao Tse-tung's China.

Even more dangerous than an unlikely prospect of an outright guarantee of the present *status quo* are the many devious schemes by which the Soviets are trying to achieve their aims indirectly. Take, for example, the not long ago proposed non-aggression pact between the NATO powers and the regimes of the so-called Warsaw Treaty. Such pacts would merely serve as an indirect condonement of Soviet conquests. To this category also belong the recently concluded bilateral agreements between West Germany and the Moscow-subservient regimes of Poland and Czechoslovakia. All this is meant as a prelude to the European Security Conference, a substitute for a peace conference and for the peace treaty with Germany.

On August 23, 1939, Hitler and Stalin concluded a deal that unleashed the second world war and gave the Soviet Union actual possession of the Baltic States—Estonia, Latvia and Lithuania. By virtue of this deal, supplemented by a secret agreement of September 28, 1939, Soviet Russia went on to incorporate the three Baltic States by force and to establish a military occupation which has continued ever since, thus illegally and one-sidedly extending her frontiers in Europe.

Thirty-one years later, on August 12, 1970, the Federal Republic of Germany concluded a new pact with the USSR, recognizing *inter alia* the "present frontiers of the European states." But the legal frontiers of the Soviet Union in Europe cannot be anything but those of pre-September 1939, established by international treaties.

Undoubtedly, this question will lead to much controversy. Be it as it might, the Moscow-Bonn pact is limitative in scope and restrictive in character. As Bonn's chief negotiator, Herr Bahr, pointed out in the Government's official bulletin (1 quote from London's "The Economist"), *"the situation as it is includes not only the continuing right of the Big Four to have the final word on the frontiers, but also West Germany's unchanged aim of state unity and free self-determination."*

After the tragic experience that my country, Lithuania, had with the bilateral treaties with the Soviet Union, some of which as the Convention between Lithuania and the Soviet Union for the Definition of Aggression, bear my signature next to that of the Soviet Foreign Minister, Maxim Litvinov, I cannot resist the temptation to cite here an American journalist on the reactions in Europe: "Europeans are welcoming the West German-Russian treaty with all the caution of a flood victim climbing aboard a raft already carrying a poisonous snake."

Nothing stresses more forbodingly the extent of the moral crisis of our times than the fact that the democracies do not hesitate to condone the misdeeds of the tyrannical dictatorship.

It stands to logic that a European Conference is thinkable only within the framework of an overall European settlement which would also include the righting of the wrongs done to the Baltic States during the Second World War. The problem of Lithuania, as well as that of the other states of East Central Europe, is within the competence of World War II Alliance. They have assumed responsibilities toward an equitable solution of this problem. For the great Western Powers, members of Second World War Alliance, the prospective European Security Conference should be not only a challenge, but also an opportunity to compel the Soviet Union to honor their wartime commitments and pledges, among others the provisions of the Declaration by the United Nations, signed by the members of World War II Alliance, including the Soviet Union, on January 1, 1942, the pertinent articles of which read as follows:

"They desire to see no territorial changes that do not accord with the freely expressed wishes of the people concerned;

"They respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them . . ."

For Lithuania, as for all freedom-loving peoples, there is no substitute for political independence and freedom. Political morality in this case is equivalent to political realism.

MINK FARMERS NEED ASSISTANCE

Mr. PROXMIRE. Mr. President, last week the Committee on Agriculture and Forestry held hearings on S. 3921, introduced by the Senator from Utah (Mr. Moss), to provide emergency loans to mink ranchers. As a cosponsor of the bill, I believe that Congress must act quickly to alleviate the present price and credit squeeze now facing this Nation's mink farmers. S. 3921 would do just that.

Mr. President, I ask unanimous consent that my testimony on S. 3921 before the Agricultural Credit and Rural Electrification Subcommittee be printed in the RECORD. I believe it clearly describes the very serious problems the mink farmers of America are facing today, and how S. 3921 can come to their assistance.

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

STATEMENT OF SENATOR WILLIAM PROXMIRE ON S. 3921

Mr. Chairman, I greatly appreciate having the opportunity to submit testimony on S. 3921, Senator Frank Moss' bill to provide emergency loans to mink farmers. As a cosponsor of this bill, I believe that Congress must act quickly to alleviate the present price and credit squeeze now facing this nation's mink farmers. S. 3921 would do just that.

The key provisions of S. 3921 are quite simple. The bill would expand the authority of the Farmers Home Administration to make emergency loans to mink farmers who suffer severe losses caused by economic conditions. It would amend subtitle C of the Consolidated Farmers Home Administration Act of 1961, which presently authorizes emergency loans to farmers and ranchers who have suffered severe losses caused by natural disasters, to extend the same loan opportunities to mink farmers who are in trouble as a result of disastrous economic conditions.

Mr. Chairman, this bill has been necessitated by the enormous problems that presently confront the mink farmers. These problems have reached crisis proportions over the last ten years. Let me briefly review three of these problems.

First, foreign fur importers, encouraged by this nation's duty free entry policy, captured nearly half the domestic fur market in 1960. By 1966, imports had climbed to 5.7 million skins, thus glutting the market with an over-supply from which it has not recovered to date. In 1967, prices fell from $19.48 to $14.00 per pelt. Today, American auction prices are less than $11.00 per pelt. According to the National Board of Fur Farm Organizations, this price decrease has eliminated two-thirds of the mink farmers known to be in business in 1962.

Secondly as a result of the influx of cheap foreign mink and a consequent reduction in the luxury appeal of the product—an appeal based on the scarceness of mink pelts—consumption in the United States has dropped more than 25 percent in the last three years.

Finally, due to the squeeze on the credit market brought about by high money rates, the mink farmer has found it extremely difficult to find credit. Normal sources of credit, such as Production Credit Banks, the Farmers Home Administration, local banks, and auction companies have not been able to supply the relief credit needed.

All of these problems have combined to place the future of this nation's mink farmers in serious jeopardy. Their very survival is at stake. Unless credit can be provided from emergency loans, a substantial number of mink farmers will face liquidation.

S. 3921, it should be stressed, is not aimed at any particular section of the country. In fact, there are mink producers in forty-two of our fifty states. The ten states producing the largest number of mink pelts are scattered throughout the country. They are: Minnesota, Utah, Washington, Ohio, Oregon, Illinois, Pennsylvania, Michigan and New York.

Overall production figures indicate there will be a quantity reduction in the number

of furs produced in all but two of the mink producing states between 1969 and 1970. In Wisconsin, where 1,749,000 pelts were produced in 1969, a quantity reduction of 546,500 is expected. This would be a cutback of 31.25 percent. This cutback is symptomatic of the sorry state of the mink market.

Mr. Chairman, the emergency loans that would be authorized by S. 3921 would enable the mink farmer to hold on until the fur market improved. And, according to the National Board of Fur Organizations, this improvement should come in the foreseeable future. Imports will be down from 3.7 million in 1969 to 2.4 million in 1970. Furthermore, production abroad is reported to be down this season for the first time in many years. And, finally, high money rates are gradually easing, thus increasing the hope for a more active market.

Mr. Chairman, in conclusion, I urge the subcommittee to give this bill its utmost consideration. S. 3921 is desperately needed by our mink farmers. I am convinced Congress should act now to assist these farmers during their days of economic crisis so that, in the near future, they can contribute to the strength of our overall economy through a strong and healthy mink industry.

PRESIDENT NIXON LAUDS SENATOR SCOTT

Mr. COOK. Mr. President, I ask uanimous consent that a letter from the President to our Republican leader, Senator SCOTT, be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, September 9, 1970.

Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR HUGH: This Administration has counted heavily on your leadership in the Senate and I want to express my appreciation to you for the great energy and dedication you have shown at this key time in America's history.

The challenge of government today demands the best available men and women and I am particularly glad you are seeking to return to the Senate. Your outstanding service to the people of Pennsylvania and the nation gives us an example we can point to with pride. Your initiative, energy and enthusiasm gives us strength and inspiration as we work to build progress as a free nation.

I have every hope that the voters of Pennsylvania will once again give you the support you need to remain in Washington to help this Administration with its work. I look forward to working with you in the months and years ahead.

With my appreciation and best personal regards,

Sincerely,

RICHARD NIXON.

SENATOR SCOTT'S ROLE IN WASHINGTON

Mr. COOK. Mr. President, for 12 years, Senator HUGH SCOTT has served the Commonwealth of Pennsylvania in the U.S. Senate. As Senate Republican leader, he has continued to serve Pennsylvania while he serves the Nation.

I ask unanimous consent that an article by columnist Mason Denison, in which Senator SCOTT describes his role as Pennsylvania's representative in Washington, be printed in the RECORD.

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

THE PENNSYLVANIA STORY: SCOTT CAMPAIGNS ON EXPERIENCE, LEADERSHIP

(EDITOR'S NOTE.—In this "The Candidates Speak" series the two major candidates for Pennsylvania's U.S. Senate seat have been asked by Mason Denison to express their unedited views on the theme: "How Important is the U.S. Senate Seat to Pennsylvania?")

(By HUGH SCOTT, Republican candidate)

HARRISBURG.—A famous American once said that "in the last analysis, what we pay for in this life is good judgment."

Twice, the people of Pennsylvania have elected me to be their United States senator, and a year ago, my 42 colleagues on the Republican side of the aisle chose me to serve as the Majority Floor Leader. I believe that my elections—by my 12 million Pennsylvania constituents and by associates in the upper house of Congress—are for the purpose of exercising my best judgment.

My leadership position, as well as my ranking positions on vital Senate committees whose actions daily affect the people of the Commonwealth, enable me to do the utmost for my fellow Pennsylvanians.

Of course, being the Minority Leader—in which role I do my best to espouse President Nixon's position on the Senate floor—has many built-in advantages for Pennsylvania and its citizens. Because I enjoy a close relationship, with the President, it is much easier for me to make known to him the needs of our state.

In addition to the White House my leadership position also opens other doors, and sharpens up the hearing of other federal officials, to the importance of Pennsylvania's well-being and her relationship with her sister states.

There are many examples; I shall cite only a few. The designation of Philadelphia as the site of the 1976 Bicentennial International Exposition—a role which will have tremendous impact all over Pennsylvania—is a major example. So are the innovative mass transit system for Pittsburgh, the new court house for Philadelphia and the new federal court setup for Allentown.

But day in, day out—with energy and persuasion—I am able to help provide funding for local projects designed to make living a little better for our people. I have generated and impressed upon the federal officials increased interest in Pennsylvania's local government projects such as public housing and water and sewer improvements.

For many years, Pennsylvania's industries and her workers have been concerned about the imports of leather, steel, flat glass, electronics items and other products and manufacturing materials which play havoc with our state's economy.

Quite simply, I say to them as I say to the White House and the departments involved: I stand for stringent import quotas, controls over foreign imports.

I have gone right to the President on these matters, notably on flat glass imports. I have been successful. The same is true of textile imports.

In this regard as in others, my voice—Pennsylvania's voice—is being heard. My message—Pennsylvania's message—is being heeded.

Experience, so important a factor in Washington, is successfully wedded to influence. I believe my experience and the influence gained by my election as Minority Leader of the United States Senate, blend successfully for the benefit of my fellow citizens.

Because my oath as a senator is to do my duty to the Constitution and the people I represent, I am prevented by the long sessions of Congress from spending my time in what traditionally is called "campaigning."

My days, sometimes late into the night, are spent in the business of the Senate—which is the business of Pennsylvania. My weekends are occupied in criss-crossing the State of Pennsylvania, telling the people of our accomplishments and soliciting their support.

But to me, the very act of being a senator is campaigning of a sort. My attendance record is nearly perfect. I take my job seriously. I take my constituents seriously. I say, and I believe—good government is the best politics.

THE NEW U.S. POSTAL SERVICE

Mr. GRIFFIN. Mr. President, on behalf of the distinguished Senator from Texas (Mr. TOWER), who is necessarily absent today, I ask unanimous consent that a statement by him concerning the new U.S. Postal Service be printed in the RECORD.

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

THE NEW U.S. POSTAL SERVICE

Mr. TOWER. Mr. President, today, I am happy to go on record as favorably endorsing President Nixon's announcement of nine individuals who will be charged with the vital task of implementing our new United States Postal Service.

I refer to the new system which by law: "shall have as its basic function the obligation to provide postal services to bind the Nation together through personal, educational, literary and business correspondence of the people."

To assist in the fulfillment of this important task, the President has reached out across the country in assembling one of the nation's most needed task forces.

In so doing, he has brought together an assortment of talent from divergent fields. Also significant is the fact that the group represents a cross-section of geographical areas of our great nation.

These nine distinguished people will serve as members of the Board of Governors. Working together as a team, I am most confident that they will serve the American public to the best of their abilities in converting our present mail system into a modern, up-to-date mail service for which we all can be proud.

POSTELECTION SESSION WOULD BE OPPORTUNE TIME TO CONSIDER RATIFICATION OF GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it has occurred to me that the most opportune time for the Senate to consider ratification of the Genocide Convention might possibly be in the postelection session. A session after the election is virtually assured at this time. I also realize that it would be impossible to consider this important convention before the scheduled adjournment on the 14th of October.

Certainly the Genocide Convention is worthy of consideration by the entire Senate. It is my hope that the Senate Foreign Relations Committee will give its utmost consideration to bringing this important convention to the floor of the Senate during the postelection session. Continued delay on this subject is not in the best interest of this country. This tactic would assure prompt action on this important issue.

THOMAS M. STORKE, A DEMOCRATIC PARTY LEADER IN CALIFORNIA

Mr. CRANSTON. Mr. President, retired California publisher Thomas M. Storke has played a significant part in the history of California and the Nation, both through his outstanding newspaper efforts and through the leadership he gave the Democratic Party in my State.

Mr. Storke had an historic role in the nomination of Franklin D. Roosevelt, a role recalled recently by James A. Farley, former Postmaster General and now board chairman of the Coca-Cola Export Corp.

I ask unanimous consent that the article published in the Santa Barbara News-Press of August 16, be printed in the RECORD.

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

SIGNING OF POSTAL REFORM BILL OF SPECIAL INTEREST TO STORKE

President Nixon's signing of the postal service reform bill, in the presence of James A. Farley and all other living postmasters general who could attend, was news of special personal interest to Thomas M. Storke, a former Santa Barbara postmaster and longtime friend of Farley.

Recently returned home from a hospital stay, Storke had just received a cordial letter from Farley which said in part:

"I am very glad to learn you have returned from the hospital and sincerely hope and trust you will continue to improve and that before long you will be up and around again.

"I can never think of you without recalling the porminent part you played in making possible the switch of the California delegation which made certain the nomination and subsequent election to the presidency of Governor Roosevelt. There were few men who played a more important part than you did and I know that President Roosevelt always appreciated your generous efforts in his behalf.

"I shall always retain pleasant memories of the generous assistance you always extended to me down the years when we worked for the interests of our party but more important for the interestes of our country."

Storke was appointed by President Wilson as postmaster here when the "new" post office—now a part of the Museum of Art at State and Anapamu—was opened in 1914. In 1920 he was an alternate in the California delegation to the Democratic convention in San Francisco, favoring William G. McAdoo as a logical successor to Woodrow Wilson.

The nomination, however, went to James Cox, with Roosevelt as running mate. Storke was a delegate to the famous 1924 convention in Madison Square Garden, supporting McAdoo in 102 ballots against Al Smith, only to see John W. Davis nominated as a compromise candidate. In 1932, again a delegate, he played a part, as Farley's letter notes, in swinging the Garner-pledged California delegation to Roosevelt and breaking a dangerous deadlock.

CHANGING JUDICIAL PHILOSOPHY OF THE SUPREME COURT

Mr. GRIFFIN. Mr. President, on behalf of the distinguished Senator from Texas (Mr. TOWER), I ask unanimous consent that a statement by him concerning the changing judicial philosophy of the Supreme Court and an article on the subject be printed in the RECORD.

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

CHANGING JUDICIAL PHILOSOPHY OF THE SUPREME COURT

Mr. TOWER. Mr. President, a most interesting analysis of the changing judicial philosophy of the Supreme Court appeared recently in Dun's Review.

The article, by New York Times writer Fred P. Graham, presents a concise explanation of the Court's evolving attitudes in such areas as labor relations, anti-trust, the rights of employers and employees, and other decisions affecting business. The philosophic change is, of course, attributable to the temperament and convictions of the Nixon appointees: Chief Justice Burger and Associate Justice Harry Blackmun.

So that other Senators may have the opportunity to read Mr. Graham's article, I insert it in the RECORD.

[From Dun's Review, October 1970]

BUSINESS AND THE NIXON COURT

(By Fred P. Graham)

Last spring, after the Senate had turned down the Supreme Court nominations of G. Harrold Carswell and Clement Haynsworth, there was some talk that President Nixon's inexperience in picking judges was beginning to show. But Chief Justice Warren E. Burger pointed out that, on the contrary, Richard Nixon was one of the most experienced selectors of Justices in United States history. Substituting for the President as the after-dinner speaker at a Washington banquet, the new Chief Justice tucked his tongue in his cheek and noted that no President since George Washington had nominated as many Justices in so short a time as President Nixon.

Getting a laugh out of the White House's discomfiture without hurting anyone's feelings was an adroit performance in itself. Yet there was more than a shadow of prophecy in the teasing reference. For not only did the retirement of Chief Justice Earl Warren and the departure of Justice Abe Fortas give the President a rare early opportunity to place a conservative stamp on the Supreme Court by replacing two of its most liberal members; given the age and infirmities of three of the remaining Justices (84-year-old Hugo Black and septuagenarians John Harlan and William O. Douglas), it is likely that President Nixon will be able to appoint a Supreme Court majority, the first President to be afforded such an opportunity since Franklin D. Roosevelt.

By appointing pro-New Deal Justices back in the late 1930s, Roosevelt was able to overturn many of the court's "strict constructionist" decisions and to set its tone for a generation. Now, given President Nixon's campaign criticism of the high court and his pledge to appoint "strict constructionists" if elected, there is every reason to believe that a Nixon-appointed court will reverse the trend once again.

While it is clear that a staunchly conservative court would have a profound impact on such controversial areas as civil rights and the rights of criminal suspects, how would such a shift to the right affect the many complex decisions that concern business? The first year of the Burger court provided only hints of the future course of the new Chief Justice's decisions. But several impressions did emerge.

For one thing, most of Burger's labor decisions favored management. His only pronouncement on the general subject of labor implied that he believes in a Constitutional "right to work"—a First Amendment right to refuse to join a union. This came when the court refused to hear the appeal of a former New York Teamster member who had been denied unemployment compensation because he invoked "conscientious objections" against rejoining the union and thus could not accept a job offer in a union shop. In the odd-couple act of the year, liberal Justice Douglas joined Burger in a dissenting opinion that the denial of benefits "places a burden on the petitioner's freedom of association." Using the terminology employed by the Supreme Court in its defense of a young man's right to become a conscientious objector to military duty, Burger argued that the worker's opposition to union membership could be a "deeply felt belief which falls in the First Amendment area."

The suggestion that workers have a Constitutional right to ignore compulsory union membership arrangements is one that few judges have been willing to kick around in public. Burger's apparent approval of the idea suggests that this unusually independent jurist may have some unhappy moments in store for organized labor.

The court's other labor decisions of last term did not give Burger an opportunity to amplify his philosophy, but his decisions on the rather narrow and technical cases that were decided must have given union lawyers some sober thoughts. Out of ten rulings that decided controversies between workers or their unions and management, he agreed with the employer's position eight times. In the two instances in which he rejected the employer's contention, the issue was apparently so clear-cut that the decision was unanimous.

Burger's conservatism on labor and other issues seems to stem primarily from three beliefs: a feeling that courts should not shortcut established procedures and lines of authority, a conviction that as many problems as possible should be handled by the states, and a strict constructionist's belief that the Constitution and laws should not be given generous reading to accommodate individuals' claims for expanded rights.

What impact will this philosophy have on the court's antitrust decisions, which during Earl Warren's tenure invariably upheld the Justice Department? There is not much to go on here, since antitrust cases were a rare commodity at the court's last session. But in the one case that did come before the court, Burger, joined by Justice Harlan, did not accept the government's contention that the merger of two Phillipsburg, New Jersey banks violated the antitrust laws. Both Justices, in fact, pointed out the benefits of the merger.

THE FOURTH MAN?

Although he did not join them on that case, Justice Potter Stewart showed a definite tendency at the court's last session to join Burger and Harlan in objecting to strict governmental regulation of business. Now, as the court term opens this month, the key question as far as business is concerned is whether the court's newest Justice, Harry Blackmun, will be the fourth man in an emerging pro-business alignment.

There are many signs, in addition to his lifelong friendship with the Chief Justice, that Blackmun shares the philosophy of the three conservative justices. Most significantly, he is an unabashed admirer of the late Justice Felix Frankfurter, who was the intellectual leader of the Warren Court's conservative minority.

Blackmun joined the court too late last spring to participate in many cases. But he wrote one dissenting opinion that could prove to be a straw in the wind: He joined Burger and Harlan in favor of giving the states broader discretion to supress prurient films, books and magazines. This opinion has nothing to do with business, of course. But it indicates a generally conservative outlook and an intellectual kinship with Burger and Harlan.

If those four Justices do gravitate towards a philosophical alignment on the court's right, it could have a significant impact on several business-related cases that are now

on the court's docket. And if they were joined in any one case by Justice Byron White, frequently the court's "swing man" between the liberals and conservatives, they would form a majority.

The old problem of secondary boycotts in the construction trades will be back before the court—this time to test the legality of a union's pressure on a neutral employer. The right of national banks to compete with mutual funds by operating commingled agency investment accounts will be decided as well as the authority of state and federal courts to make unions pay damages to workers who have been wrongfully stripped of their union membership.

But the most intriguing set of business-related questions are the increasing instances in which individuals seek to invoke concepts of free speech and equal treatment against private companies. In fact, such cases could become the major concern of corporate lawyers.

Item: Ida Phillips of Orlando, Florida was denied a job by Martin Marietta Corp. under a company rule that barred all mothers of pre-school-age children. She claimed that this violated the Civil Rights Act's rule against sex discrimination. Lower courts agreed with the company's assertion that she was excluded not because she was a female, but because her responsibilities to three small children might detract from her work. Should employers be forbidden to lay down such blanket rules regarding women, and be required to prove in each individual case that the woman would be handicapped in her job because of her sex?

Item: Black workers at the Duke Power Co. plant in Draper, North Carolina were segregated into menial jobs until the federal equal-employment law was passed in 1964. But ever since that time, few of them have been able to move up because the company has instituted a requirement of a high-school diploma or a specified score on an intelligence test as a prerequisite for promotion; Negroes have not fared well on either score. Should employers be barred from applying such a test, even though it is applied equally to all races, unless it can be shown that the tests actually do measure the employees' capacity to do the work?

Item: An interracial group in Chicago felt that Jerome Keefe, a real-estate broker, was guilty of "blockbusting" in their neighborhood—that is, of attempting to panic white homeowners into selling out at deflated prices by suggesting that blacks were moving in. They distributed leaflets that expressed this view but were ordered to stop by a state judge. Does the right of privacy of Keefe and his family outweigh the protesters' First Amendment right to express their views?

Although this issue came to the Supreme Court as a small businessman's racial dispute, many lawyers think that it will come to plague officials of large companies, and not always over racial questions. Large corporations are increasingly becoming the targets of antiwar and environmental activists, who may adopt the tactic of picketing corporate officers' homes if the Supreme Court gives the strategy its blessing. Similar questions seem to be imminent.

What right, for instance, do union members have to demand entry into a privately owned skyscaper in order to picket a company that has offices inside? Does the Constitution give individuals legal recourse against companies that poison the environment with pollutants and radiation? Can a company that holds government contracts be required to go beyond nondiscrimination to hire a certain percentage of Negroes?

These are questions that are either on their way to the Supreme Court now or are likely to gravitate there soon. And there ultimate disposition could certainly be determined by the amount of time that elapses until these cases are heard. For if, say, Justices Black or Douglas—or both—should decide to call it a career, a conservative majority would almost automatically be assured. There is strong indication in the writings of Warren Burger that the Warren Court was presumptuous in some of its declarations of individual rights against the state. Thus, as efforts are made to extend these rights to an individual's relationship with a corporation, a Nixon-appointed court would be almost certain to demur.

It is, of course, true that a man's previous record is not always an accurate guide to how he will act when he takes his seat on the hallowed top court. After all, President Eisenhower was under the impression that Earl Warren was a middle-of-the-roader when he named him Chief Justice.

But President Nixon has selected only men from the Federal Courts of Apepal who have solid track records as conservatives on the types of legal questions that tend to come before the Supreme Court. This is why many lawyers believe that Nixor may indeed succeed in molding a staunchly conservative court that could—much like its liberal predecessor—affect the life of the nation for a generation.

As far as the business community is concerned, such a rightward shift could reshape the court's position in such thorny areas as labor law and antitrust and effectively bar the door to a rush of private complaints against corporations. To quote the late Chief Justice Charles Evans Hughes in one of his unguarded moments, "The law is what the judges say it is."

OCCUPATIONAL HEALTH AND SAFETY BILL

Mr. WILLIAMS of New Jersey. Mr. President, tomorrow or Friday the Senate will begin the consideration of the occupational health and safety bill (S. 2193), which I introduced over a year ago. Enactment of this bill for the benefit of American workers is essential to deal with the fatalities and disabilities in the work force. In order to emphasize the concern generated by the need for this legislation and to underscore the necessity of prompt and effective action, I ask unanimous consent to have printed in the RECORD a letter that I have received from Mr. Ralph Nader in support of the pending bill.

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

OCTOBER 7, 1970.

Senator HARRISON WILLIAMS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: Your Senate Committee's recent passage of Occupational Health and Safety legislation, S. 2193, and the House's imminent consideration of the very similar Daniels bill, is a significant contribution to the beginning efforts of the Congress to meet the needs of American working men and women. However, since recent newspaper accounts have referred to another bill in the House, and contained a favorable reference to that bill by me, your Committee should know that this reference was based on the major improvements in that bill over previous Administration drafts, and my belief that the choice for the actual situs of standard-setting and enforcement was not as essential as the guidelines which Congress promulgates to govern any such agency or bureau and the quality of legislative oversight. However, by any standard, your present bill promises to be far more effective legislation at this time.

More specifically, I would like to reaffirm that strong support for the Williams bill, S. 2193, particularly when that bill is compared with S. 4404, and H.R. 19200, which are bills on the same subject recently introduced by Senator Dominick, and in the House of Representatives by Representatives Steiger and Sikes. The Dominick, Steiger and Sikes bills are seriously defective in protecting working men and women in the following ways:

a. The Dominick and Steiger bills allow any employer to veto the right of even one employee to accompany the safety and health inspector on his inspection. Such veto power is not present in your bill. This right is absolutely necessary for employees to learn about hidden hazards that may be emerging or imminent and the best means for the worker to protect himself.

b. The Dominick and Steiger bills do not provide adequate authority for the installation of monitors for noise or harmful dust, or other dangerous working conditions which can be objectively measured. Such monitors are a highly effective and low-cost method of allowing employees to know of the dangers in their work environment. As such, the Dominick bill, and the Steiger and Sikes bill have substantially weaker monitoring provisions than are needed.

c. The Dominick and Steiger bills have less effective sections to prevent imminent dangers (once uncovered) from continuing and have unduly long and burdensome provisions for review of health or safety standards set by the Government.

I hope these comments will remove any doubt that I support any legislation which so drastically weakens these essential parts of the Williams' bill, S. 2193.

Sincerely,

RALPH NADER.

FRANCHISING AND THE FUTURE OF SMALL BUSINESS

Mr. McINTYRE. Mr. President, the franchise system of business operation has now reached an estimated sales of $90 billion a year with more than 1,000 franchisers and approximately 600,000 franchisees across the country. Senator ALAN BIBLE, chairman of the Small Business Committee and the senior Senator from Nevada, recently delivered a very interesting speech regarding the state of the American economy, with particular emphasis on small business and on the role of franchising. There has been a great deal of publicity lately about franchising, some of it critical. Senator BIBLE's speech was delivered to the national convention of franchisees for General Business Services, a Washington-based franchiser which operates nationwide and which in many ways exemplifies what franchising can mean to the small businessman.

I believe that Senator BIBLE's speech brings to this subject a balanced perspective that I have found lacking in so many of the recent statements and articles, and I am pleased to 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:

SMALL BUSINESS LOOKS AT THE 1970'S

(Address of Senator ALAN BIBLE)

Mr. Chairman, small businessmen and businesswomen and friends and guests of your convention. It is a distinct pleasure for me to accept the invitation of President Browning today to address a gathering of small entrepreneurs who daily help other

small entrepreneurs across this nation. This first national convention of General Business Services Corporation is a graphic demonstration of how new industries can grow up within the free enterprise economy of this country. More particularly, it reflects just how the franchise field mirrors the real potential of our economic system—imagination and innovation.

Some months ago your convention officials asked me what my topic would be so they could use it in advance announcements of your convention. I bravely said the general title would be "Small Business Looks at the 1970's." Whether I would be brave enough again today, in all honesty, to pick that topic in view of our economic jitters these days, I would seriously doubt. Be that as it may, I believe you will agree with me that any look at our business future through today's economic-clouded glasses takes a daring crystal-gazer no matter whether it is a financial expert or novice doing the predicting.

Today we have prices and wages moving upwards feeding the inflation spiral. At the same time unemployment is increasing and the rate of business failures is on the upswing, highlighted this past week by the nation's largest railway system going into bankruptcy, adding more confusion to a jumping-jack stock market.

Over the past year, we have noted with mounting concern the triple squeeze on our small businessmen from credit policies restricting money in the private sector, tax changes adverse to small firms and a cutback of nearly 60 percent in the last-resort lending programs of the Small Business Administration.

Three months ago, the First National City Bank of New York forecast a severe economic downturn, the first in a decade, "as a result of the tight money policies pursued throughout 1969." Wall Street commentators in April and May were saying:

"All indicators point to severe . . . pressures on profits during the first half of the year . . . perhaps more than 20 percent on a before-tax basis."

Net corporate working capital, from December 1968 to April 1970, rose only $2 billion (or less than 1%). The bulk of this increase was in inventories (at the highest ratio to sales in 9 years) and accounts receivable; while cash and government securities both declined more than 10 percent. As a result, we are seeing liquidity difficulties, particularly for communications, finance, and railroad companies, with Penn Central being the most notable victim.

Across the spectrum of commerce, the number of business failures increased 20.5 percent in the past year with the annual failure rate in a comparable rise from 36.4 firms per 10,000 to 43.7 percent.

Unemployment, according to Governor Brimmer of the Federal Reserve System, may average 5.5 percent for the next six months.

Prices in the past 12 months rose at their steepest rate in 20 years.

Since December of 1968 the Dow-Jones Industrial Average has declined roughly 300 points, or about 30 percent of its value.

Requests to the President to supplement the Administration's financial policies, which have been described under a heading of "gradualism," have come from among others, the Managing Director of the International Monetary Fund, the Organization for Economic Cooperation and Development, the Chairman of the Federal Reserve System, and distinguished Members of Congress from both parties.

Already serious doubts have been expressed that merely making a monthly identification of inflationary wage and price increases will not do the job that is needed to reverse these trends.

In continuing the process of gathering information, correctly interpreting it, and making proper decisions on the action to be taken about our economy, we need to bring to bear all the wisdom and experience this Nation possesses.

And what does all of this mean? I assure you I am not here to paint a drab economic picture of the future because the country's top economic prognosticators differ widely and deeply in their predictions. As a legislator and someone who listens to what the various economists, bankers and business leaders predict, just as you do, I see no valid reason for a crying-towel or a doom-and-gloom recitation at this time. And as for you directly, one big reason is that as franchisees, you are participants in one of the most dynamic features of our economy today. What about franchising?

According to estimates of Senator Harrison Williams' Subcommittee of my Small Business Committee, which held 6 days of franchise hearings earlier this year, the number of franchise holders is now over one-half million. The Small Business Administration projects an increase to 650,000 units by 1976. Our Subcommittee estimates that the franchising industry now generates about $90 billion in sales annually, almost one-third of the country's retail total, and nearly one-tenth of our entire gross national product.

And why is franchising such a dynamic force today. It offers a prospective businessman with limited capital and experience the opportunity to own and operate a business which has been settled into a relatively established format. However, a major ingredient is the franchisee himself and the drive, discipline and willingness to work long hard hours which he brings to his endeavor. I therefore congratulate you for your part in a classic American success story.

There is an almost natural law that big businesses tend to deal or do business with other big businesses. Likewise, small businesses tend to trade with other small businesses. It doesn't have to be that way, but that is what the facts seem to prove out. You franchisees who serve small business are witness to the operation of this law, for you are small businesses dealing with small businesses. You are performing a creditable and necessary function, because you work every business day to strengthen the vitality of our Nation's small businesses.

Many students of business size have a tendency to emphasize the advantages of big business over small business, but that is a mistake. Those who are close to the small businesses of America know very well that they are truly the foundation of the American economy . . . its true well spring, if you please.

There, flexibility, quick adaptation, native unincorporated intelligence, personalized relations with employees, other businesses and the general public, and above all the vital element of high personal risk-taking, have an opportunity to dominate and flourish.

There is the tough frontier for new risk-taking entrepreneurs to enter, the new land of opportunity which hundreds of thousands choose to enter each year. There is the opportunity for responsibility and decision-making and the challenge of risk-taking, which are the seedbed for our best managers in both large and small American businesses. And there is the retreat, the self-renewal for which thousands of managers, scientists, and engineers abandon big business each year to refind themselves in the small business crucible of renewed enthusiasm, challenge and new horizons.

The tremendous service which you are performing for these small businesses in your every work day bring to them some of the advantages of large-scale business through your specialized services. You relieve them of tedious routine or the burden of operations which can better and more cheaply be performed by specialists like yourselves. Thereby, you leave them free to concentrate on their unique capability . . . their thing . . . which is their business acumen.

The American people have wisely been aware of the vitality with which its small businesses strengthen our economic life, and have wisely embodied their appreciation in the great organic legislation, the Small Business Act of 1953. On the legislative side, the Congress has seen fit to create two special Select Committees on Small Business to help monitor the well being of small business. In the executive branch of the Government, the Small Business Act is translated into reality by the Small Business Administration in its relationship with other branches of government and the general public as well.

Now, I should like to tie toegther for you the points I have sought to make thus far today by means of a simple comparison. I have rarely seen it expressed this way but I believe it sets forth the absolute wisdom of the American people in their belief in small business.

At the very heart of economic strength must be found a vigorous decision-making process and a stringent over-riding risk-taking. That is the nucleus of the free enterprise system. The decision-making is indispensable because of the lightning-fast changes which characterize our age of innovation. On the other hand, personal risk-taking is the whiplash which keeps businessmen honing the competitive razor in the marketplace.

Now, in these terms let us compare our economic system here in the United States with that in Russia. Yes, when the chips are down, and when the problems get heavy, the Russians always have one economic decision-maker, *the Kremlin*, and *no* personal businessman risk-takers.

But what about the United States? We have over 11 million risk-takers, businessmen and women, that is. And 99 percent of our businesses are small businesses. They provide a deep, vibrant, challenging, freedom-of-choice, self-motivated challenge to do better and reap the personal rewards of their personal endeavors through personal profit. Our Soviet neighbors across the seas have no comparable challenge.

That is the essence of the differences between the Russian economy and ours. That explains why Russia has over 15 percent greater population than the United States yet 50 percent less Gross National Product. The Union of Soviet Socialist Republics recently celebrated its 50th anniversary. Fifty years have been more than enough to achieve a much closer gap with the productive capability of the United States. Certainly, the Japanese and the Germans have done better in 25 years subsequent to their World War II defeats.

I believe you will find the reasons for our greater economic gains lie in the number of independent, self-governing businesses. We have no Gosplan; we have no Central Party Committee to dictate to each business enterprise. We have over 11 million individual, independent businesses. That is the American strength.

And what about these 11.4 million businesses, just who and what are they? About 80 percent are sole proprietorships, another 12 percent are corporations and the remaining 8 percent are partnerships.

Farms numbered about 3.4 million, or 30 percent of the total. Retail, services, and finance, insurance and real estate groups number about 5.8 million, or 50 percent. Manufacturing had 410,000 businesses for 4 percent and contract construction had 880,000 for 8 percent. The balance of 8 percent were in mining, wholesale trade and various utilities.

By size, almost all farms are small business although big corporate farming is on the rise. Of the 8 million non-farm businesses, 85 percent had annual business receipts under 100,000, and another 13 per-

cent were bigger but under $1 million. Thus, 98 percent of the non-farm businesses were small by the definition of the receipts under $1 million, and over 99 percent if farms are included.

Thus, I repeat, that is the American strength.

And what is another challenge as small business looks at the 1970's? May I read to you from a letter I received several months ago from a business management executive. He said:

"During the 1960's, growth was the prime objective of business effort. The 1970's may have brought us to a plateau. Managements tend to concentrate today on efficiency although growth, of course, is still desired. But greater efficiency may be the key to survival."

And, of course, that message is particularly significant for all of you as you think about yourself and the 1970's. You have businesses which provide a medium for upgrading efficiency of other business firms throughout the small business segment of our economy.

That is not only your personal challenge but the challenge to all small businesses as you seek to enrich and strengthen the American economy.

In closing, may I wish you well as small businesses in your own right, and as allies of other small businesses you serve across this land. Those of us in the legislative halls of the Congress with special responsibilities to assist small business will continue to work hand-in-hand with you as the 1970's present their challenges, their burdens and their benefits.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. If there be no further routine morning business, the period for its consideration is concluded.

EQUAL RIGHTS FOR MEN AND WOMEN

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 read the joint resolution by title, as follows:

A joint resolution (H.J. Res. 264) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. BAYH obtained the floor.

Mr. MANSFIELD. Mr. President, will the Senator yield to me to make a brief opening address?

Mr. BAYH. I yield.

Mr. MANSFIELD. Mr. President, I am in receipt of a letter, as I am sure all other Senators are, from the distinguished Congresswoman from Michigan, MARTHA W. GRIFFITHS. The letter reads as follows:

DEAR SENATOR MANSFIELD: This letter is a plea for you to vote for the Equal Rights Amendment, H.J. Res. 264, as it is, without any amendments.

Most opponents and all supporters of this amendment agree that the Fourteenth Amendment, properly interpreted would make the new amendment redundant; but the truth is that in 100 years of effort the Supreme Court never has interpreted "person" in the Fourteenth Amendment to mean a woman.

Let me give you one instance. In 1961, in the case of Hoyt v. Florida, the Supreme Court held that Florida's exemption of women from jury service, is based upon a reasonable classification and therefore does not violate the Fourteenth Amendment: Justice Harlan saying, "this Court's dictum in Strauder v. West Virginia, 100 U.S. 303,310 (1879) to the effect that a State may constitutionally 'confine' jury duty 'to males' . . . has gone unquestioned for more than eighty years in the decisions of the Court," adding "even if it were to be assumed that this question is still open to debate. . . ."

In the Strauder case of 80 years earlier which dealt with a West Virginia statute restricting jury service to white males, the Supreme Court held that it violated the Fourteenth Amendment and said:

"The very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prjeudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others."

The Court found that the Fourteenth Amendment was not intended to prohibit such a classification on the basis of sex. "Looking at [the Fourteenth Amendment's] history, it is clear it had no such purpose. Its aim was against discrimination because of race or color." 100 U.S. at 310.

The opponents then of "equal rights" are really suggesting that this Congress insist that the Supreme Court, which has never found women to be "persons", be the legislators where women are concerned, and that the cost of that legislative process be borne by individual women in individual suits.

The Supreme Court, Senator, is a poor legislator. Legislation is our business. It is the thing we are paid by the taxpayers to do.

Please vote for this amendment and let us then, with the state legislators, direct our attention to making the laws of this country apply equitably and equally to men and women.

Sincerely yours,

MARTHA W. GRIFFITHS,
Member of Congress.

Mr. President, I am in full accord with Congresswoman GRIFFITHS' proposals. I intend to do all I can to assist her over here in the outstanding work which she undertook in the House and the outstanding achievement which she secured in the pending legislation.

Mr. ERVIN. Mr. President, since we are talking about equal rights for men and women, I would like to proceed on the assumption that a male Member of Congress has an equal right with a female Member of Congress to express an opinion in respect to what the Supreme Court held in the case of Hoyt against Florida.

The Supreme Court of the United States held exactly the opposite from what the distinguished Congresswoman from Michigan said in the letter to Senator MANSFIELD. The Supreme Court said in that case, in as clear words as can be found in the English language, that the equal protection clause embodied in the first section of the 14th amendment prohibits a State from making any legal distinction between men and women except in those cases where the legal distinction is founded on a rational basis.

If all that the distinguished Congresswoman from Michigan and those for whom she speaks desire is what she says in the letter to Senator MANSFIELD, the adoption of the women's rights amendment is wholly unnecessary. Not only is it wholly unnecessary, but it might jeopardize the constitutional rights of millions and millions of women and millions and millions of little girls.

The reason why I say that is that she says:

Our objective is the same as the objective of the 14th Amendment.

The 14th amendment is already a part of the Constitution, and if another amendment to the Constitution were adopted no court could very rationally say that the adoption of the other amendment was merely to make effective what was already in the Constitution. The Supreme Court would have to say that the Congress intended to change something by proposing the amendment and the States, by adopting the amendment, proposed to change something. That is the only kind of rational decision the Supreme Court could come to.

One of the most knowledgeable men in the field of constitutional law in the United States is Prof. Paul A. Freund, of Harvard Law School. He pointed out back in 1953, and he pointed out again in testimony before the Senate Judiciary Committee a few weeks ago, that the interpretation which might well be put on the women's rights amendment by the Supreme Court is that it is intended to change the 14th amendment. And if it is interpreted to change the 14th amendment and to do what some of its proponents say it is intended to do; namely, to make it impossible to have any legal distinction of any kind between men and women no matter how reasonable and rational the legal distinction may be—it is indeed the most drastic and radical proposal ever made here, and will rob millions of wives, homemakers, mothers, and widows of rights they now enjoy.

Mr. President, this is not the Senate's grandest hour. It is not the Congress' grandest hour. This measure was passed in the House without any committee hearings. The total amount of time allowed for debate in the House when it was considered was approximately 80 minutes.

The bill came to the Senate. We have a Committee or the Judiciary which, under the rules that govern, or are supposed to govern, the actions of this body, has jurisdiction to consider and pass upon proposed constitutional amendments.

This House-passed resolution was not permitted to go to the Judiciary Committee. It was placed upon the calendar. The Judiciary Committee has never had an opportunity to consider it.

After that action was taken—that is, after the resolution was placed upon the Senate Calendar instead of being per-

mitted to take its normal course and be referred to the Committee on the Judiciary for study—I attended a meeting of the Committee on the Judiciary, and the committee, with far more than a quorum present—and a quorum of that committee is nine members—voted, with one dissenting vote and with one abstaining vote, to request the Senate leadership to let the House-passed resolution be referred to the Senate Committee on the Judiciary for normal consideration and action.

The plea of the overwhelming majority of the Senate Judiciary Committee, including several Senators who were cosponsors of the House-passed resolution, has been ignored. Mr. President, we ought to have regularity of procedure observed in the Senate of the United States. It has not been observed in respect to this amendment.

Notwithstanding the fact the the leadership ignored the request of the Senate Judiciary Committee, which had jurisdiction of the House-passed resolution under the rules of the Senate, the distinguished chairman of the Committee on the Judiciary scheduled hearings by the full committee on this subject, and we had the testimony of some of the greatest legal scholars in the United States on the subject. One of them was Prof. Paul A. Freund, to whom I have already referred. Another was Prof. Philip B. Kurland, of the University of Chicago Law School. These gentlemen are among the outstanding legal scholars in the United States, and they both advised that the Senate ought not to approve the House-passed resolution for equal rights for women in its present form.

They pointed out that the resolution in its present form would place in jeopardy every statute, Federal and State, which makes any distinction between men and women. It has been pointed out by attorneys general of several of the States—and I shall introduce some of their statements subsequently—that the passage of this resolution and its ratification by the States would result in years and years of litigation, which would be necessary in order to elucidate its meaning.

This is not only a peculiar resolution in these respects but, Mr. President, I recur to the fact that the House of Representatives had no hearings whatever on the resolution.

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

Mr. ERVIN. I yield.

Mr. BAYH. I do not wish to interrupt the eloquent presentation of my friend from North Carolina, but I just wanted to be able to determine the direction of his argument.

According to most precedents, the proponents of legislation have the first opportunity to speak. They are allowed at least to express their support. I yielded to the majority leader briefly for a statement from Representative GRIFFITHS. I am most anxious to have the Senator's opinion, and, of course, the Senator from North Carolina is always a real tiger in pursuing his case, but I think it would be——

Mr. ERVIN. If the Senator will be willing to listen, I will give him my opinion.

Mr. BAYH. The Senator came over to the Senator from Indiana and asked if he would yield the floor for 2 or 3 minutes. I did so out of deference and great respect to my friend from North Carolina. But I think I am obliged to suggest that there has not yet been an opportunity for the chairman of the Subcommittee on Constitutional Amendments, who is the principal proponent of the bill on the floor, to make a speech about the measure now before the Senate.

Mr. ERVIN. Will the distinguished Senator from Indiana permit me to make two little observations?

Mr. BAYH. I do not want to deny my friend from North Carolina the opportunity to make all the observations he wants. I just thought that, from the standpoint of precedent and proper order, I should be able to make my case and give him something to shoot at.

Mr. ERVIN. The Senator permitted the distinguished Congresswoman from Michigan to make a speech to the Senate by indirection, and I thought maybe that it would be in order for me to set the record straight with respect to the Hoyt case before the Senate proceeded further.

I would like to say that I have tried to make an investigation, in the limited time I have had, and so far as I can find, this is the only amendment that has been proposed since about 1860 that has been submitted to the States with authority for ratification any time between now and, to use one of my favorite expressions, when the last lingering echo of Gabriel's horn trembles into ultimate silence. Every other proposed amendment of recent years has provided that it should be ratified within 7 years after submission to become a part of the Constitution.

And another thing: I do not believe anyone in the House of Representatives read this resolution, because it has the same thing in it twice. Its mere perusal shows how half-baked the drafting of the resolution has been as well as how half-baked its consideration has been, both in the House of Representatives and in the Senate.

Here is what it says:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

That was all that was necessary on that subject. But the drafters did not stop there. They put in a section 2 in this joint resolution, which repeats the same thing:

SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States.

That would be put in the Constitution, as a part of this amendment. It has no place there, because the Constitution already provides that. So the Representatives who supported the resolution in the House of Representatives and the Senators who have advocated it in the Senate have not even taken the pains to point out what a half-baked resolution this is, simply from the standpoint of drafting.

I shall offer an amendment to strike out, at the appropriate time, this surplusage, this section 2. I shall offer an amendment to provide that this resolution must be ratified within 7 years, just as all other such resolutions have provided since 1860, or thereabouts.

Also, according to its terms, this amendment would go into effect in 1 year, and possibly invalidate every State law making any distinction between men and women, such as the right of dower and the right of primary support of the wife by the husband. Many of the State legislatures do not meet every year. The Legislature of my State of North Carolina meets every 2 years. So I shall offer an amendment to modify the resolution accordingly.

I shall also offer an amendment which all of the proponents of the resolution, including the distinguished Representative from Michigan, ought to join me in supporting in order to eliminate the fears which the resolution has engendered in the minds of constitutional scholars; namely, that it will invalidate all laws making any distinction between men and women, no matter how reasonable particular distinctions may be.

The amendment I propose to offer says that this House-passed resolution shall not rob the women of this country of any constitutional right they now have under the fifth amendment or any constitutional right they now have under the 14th amendment. I hope my distinguished friend, the Senator from Indiana, will join me in asking for the yeas and nays on that amendment, because I want to see how many Members of the Senate are going to vote to rob the millions of women in America of their constitutional rights under the fifth amendment and under the 14th amendment.

The truth is, Mr. President, that this has become a contest between a relatively small group of business and professional women, on the one hand, and the wives, mothers, and the widows of this country, on the other hand. Why the former want to deprive their sisters of necessary legal protection in the name of a specious equality, I cannot comprehend.

I am going to offer another amendment and give the Members of the Senate an opportunity to say that they do not believe that women ought to be drafted for compulsory military service and that they are unwilling to nullify laws which are reasonably designed to promote the health, the safety, the privacy, the education, or the economic welfare of women, or which are reasonably designed to enable them to perform their duties as homemakers or mothers.

I want to see how many Members of the U.S. Senate are going to vote against that proposal.

Mr. BAYH. Mr. President, will the Senator yield? Would the Senator care to observe whether the 3 minutes for which he asked the Senator from Indiana to yield have gone by?

I must again point out that the propo-

nents of this measure have not had a chance to make any kind of speech on it. In light of what has happened, I deeply regret that the Senator from Indiana yielded to the majority leader as a courtesy to read a letter into the RECORD. What the Senator from North Carolina is doing is totally unprecedented. I have patience and I have courtesy, but the Senator from Indiana deserves the same courtesy he has given to the Senator from North Carolina. Because of a previous unanimous-consent order, we have only 1 hour on this measure this morning, and if things continue as they are now, the Senator from North Carolina, an opponent of the bill, is going to use up the full hour before the proponents even have a chance to make a comment, much less a speech on the subject.

Mr. ERVIN. I promise the distinguished Senator from Indana that I will yield the floor—and extend to him my great gratitude for affording me this opportunity to speak—in just a moment.

I have received a letter from a lady who said she was going to do what she could to purge me from the Senate if I dare to persist in the fight against this amendment. She said I was wasting my time in doing so, anyway, because, as she said, a majority of the U.S. Senate would not dare to change a single dot over a single "i" in this resolution as it was passed by the House.

I think the lady expressed a very low opinion of the courage of U.S. Senators. I do not agree with her. I think they love their country well enough to listen to debate and to consider amendments that would avoid the disastrous consequences that this amendment could make possible.

I trust that the Senator from Indiana, in the magnanimity of his heart, will forgive me if I have trespassed a little beyond the time I thought I would need and have said more than what he thinks I ought to have said.

I now yield the floor, with profound gratitude to the Senator from Indiana for giving me the opportunity to point out that the case of Hoyt against Florida holds exactly the opposite of what the distinguished Representative from Michigan said it holds. While I regret to disagree with her, I am constrained to assert without fear of successful contradiction that the Supreme Court declared in the Hoyt case that the equal protection clause of the 14th amendment makes unconstitutional a State law which makes a legal distinction between men and women unless such law is based upon reasonable grounds. Surely, the Constitution ought not to make unreasonable or irrational laws constitutional.

Mr. BAYH. Mr. President, the Senator from Indiana has nothing but the greatest respect for his friend, the Senator from North Carolina. However, I must say that on this issue the Senator from North Carolina's usual good judgment about the relative merits is not up to par. I was happy to yield. I would not have interposed an objection except for the fact that only limited time is available for any discussion of this matter today. It seemed that the entire hour would pass with only the eloquent argument of the Senator from North Carolina opposing the measure before the proponents could make their case.

Before proceeding with my prepared remarks, I must say that I think the record should be clarified, or expanded, so that the entire picture will be shown.

The Senator from North Carolina pointed out that the Senate Judiciary Committee adopted a resolution with only one dissent and one abstention, asking that the present bill be taken from the Senate Calendar and referred to the committee for hearings. I think the record of that committee will speak for itself.

The Senator from Indiana was the one who dissented. He dissented because he was only too familiar with the parliamentary rights of any Senator to kill any piece of legislation that ever gets to that committee. The record will show that we have had extensive hearings on Senate Joint Resolution 61, which is identical to House joint resolution now before the Senate. Senate Joint Resolution 61 was reported out of subcommittee to the full committee. It is still there because, very frankly, the Senator from Indiana was denied the chance to put the question of whether the committee would have reported Senate Joint Resolution 61. Earlier in this Congress we had a 4- or 5-month delay because one of our colleagues in the Judiciary Committee prohibited another constitutional amendment from even seeing the light of day. Therefore, the Senator from Indiana feels that the majority leader adopted the only reasonable course that could have been adopted. I simply will not remain silent and let some suggest that this matter has not been adequately heard. It was and it is being adequately heard.

A unique situation presently exists in the Judiciary Committee. Even if the proponent of a bill or the chairman of a subcommittee has held extensive hearings on a measure, if the opponents of this measure desire, they are given the opportunity to hold full Judiciary hearings. This has happened twice. It happened on the direct election proposal, and it happened on the women's rights amendment.

It seems to me that this might establish an undesirable precedent. In an effort to delay and to keep the measures reported by the subcommittee from seeing the light of day, the committee has been having two sets of hearings. As if this were not bad enough, we now have the opponents coming on the floor and saying that there has not been adequate discussion, after two full sets of committee hearings.

I think this is rather ridiculous, Mr. President, but I will not spend a great deal of time on the point.

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

Mr. BAYH. I would just as soon have a chance to finish my remarks, and then I will yield to the Senator from North Carolina.

I must admit I have been a little sensitive on this issue. This measure has been kicked around Congress for 47 years. It has been the subject of every kind of dilatory tactic to keep it from passing. Now there are those who suggest that if we really love our country, we are going to be opposed to this; if we really believe in protecting children or wives or mothers or widows, we are going to be opposed to this. This is rather ridiculous. I think we are presented with a basic question of equality. All we are trying to do is accord legal equality to all.

We are trying to provide equal protection for mothers, wives, widows—for all the citizens of this country.

Mr. COOK. Mr. President, if the Senator from Indiana will yield for just a few minutes, all I want to say, before the Senator from Indiana gets started on his prepared remarks, is that I, being on the minority side, have been the subject of both their hearings. I have been the subject of the will of the majority in this regard, to listen to all the proponents and all the opponents.

I might say to you, Mr. President, just in passing and listening to some of the arguments, that people are not too swayed when the distinguished Senator from North Carolina talks about the fact that there was a limitation on the constitutional amendment. There has only been a limitation of years in four out of the five amendments now on the Constitution of the United States. That is not a very large percentage, really and truly, when we consider that, somehow or other, someone adopts the theory there should be a limit of 7 years and everyone picks it up, that there is authority, or a rule of law for it, and no great hue and cry occurs when one considers that four out of five have had that limitation. We can argue that for some time. However, it has not been here for 43 years, but for 47 years. There have been sufficient hearings. The Senator from Indiana has held hearings, as has the Senator from North Carolina.

Mr. ERVIN. Mr. President, will the Senator from Kentucky yield for a question?

Mr. COOK. I would like to finish, because I have only 2 minutes, and then I will be glad to yield.

Mr. President, there is only one point I want to try to develop through this whole thing, that two citizens stand before their country. They both look at their country and they say to it, "I pledge to you all of my love, all of my faith, all of my energy, and all of my tribute."

The image of that country looks back and says to them, "Thank you very much, but I am going to give more to him than I am going to give to her."

Mr. President, if this is a constitutional government, if this is a government based on equality, then this Government will look at both of those two citizens and say to them, "To you I treat alike. To you I treat equally. To you, under a constitutional government, I treat the same."

Mr. President, that Government need not say to those two citizens, sitting side by side, earning the same salaries, contributing the same to social security, and contributing the same to their Govern-

ment employees' pension programs, "To you, sir, I will always give greater benefits. To you, ma'am, you will always get less."

Mr. President, that is not equality. That is what is required. That is in respect to all the things that will make a widow cry. She will have something taken away from her. We can listen to the kind of political oratory can make people in a town square cry, but we are talking about the dignity of people—the dignity of people under the Constitution of the United States, that, by George, in this free Nation, every individual, be they male or female, will be treated equally.

PRIVILEGE OF THE FLOOR

Mr. BAYH. Mr. President, I ask unanimous consent that members of the Judiciary Committee staff may have access to the floor during the remainder of the debate on this joint resolution.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask that they stay out of the aisles and keep the aisles clear.

The ACTING PRESIDENT pro tempore. Under the rule, the aisles will be cleared.

Mr. BYRD of West Virginia. I also suggest, Mr. President, that there are supposed to be no demonstrations of approved or disapproved from the galleries under rule XIX.

The ACTING PRESIDENT pro tempore. Rule XIX will be enforced. There will be order in the galleries.

Mr. BAYH. Mr. President, I should like to take a few minutes of the time of the Senate to lay the basic premise for this constitutional amendment which has been knocking around for almost five decades. Then I am sure that the Senate will be given a thorough opportunity to discuss it. I hope that this debate will be limited to discussing and exploring the strengths and alleged weaknesses of this amendment. I hope that we will not have a repeat of the past few weeks, in which the Senate was denied the opportunity to vote up or down an important constitutional amendment.

Mr. President, I rise to express my enthusiastic support for House Joint Resolution 264, the proposed amendment to the Constitution to guarantee equal rights for men and women.

As the chairman of the subcommittee which has held hearings on this matter, and as one of the principal sponsors, I feel that it is important to set out the interpretation of the supporters of the measure relative to some of the controversial points. This is important in hopes of persuading some to join in support who otherwise would not. I am also sure that the courts at some future date might look to see what certain of us felt the critical points of the amendment should be interpreted to mean.

In my judgment, Mr. President, only by passing the equal rights amendment can we abolish the discrimination which exists today in the eyes of the law on the basis of sex.

For almost one-half a century, we have failed to take action on this amendment and by failing to act have allowed the women of our country, in many respects, to suffer the burdens of second-class citizenship—burdens which by no reasonable explanation can be justified or should be tolerated.

This proposed amendment provides that—

> Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have the power, within their respective jurisdictions, to enforce this article by appropriate legislation.

The language of the amendment warrants careful study, for there is considerable controversy over what it does or does not mean. It would not eliminate all the differences between the sexes. Congressional enactment would not and should not eliminate the natural physiological differences between the sexes. But Federal, State, and local governments can be prohibited from imposing legal distinctions based on sex. That is exactly what the equal rights amendment is designed to do—no more, no less.

As Prof. Thomas I. Emerson, of the Yale Law School, pointed out so eloquently at the recent Judiciary Committee hearings:

> The fundamental legal principle underlying the Equal Rights Amendment, then, is that the law must deal with the individual attributes of the particular person, not with a vast overclassification based on the irrelevant factor of sex.

LEGISLATIVE HISTORY

Mr. President, some complaints have been heard that this amendment has been presented without adequate study. No amendment has been more thoroughly studied than this one. The amendment itself is not new. Resolutions proposing this amendment have been introduced in every Congress since 1923. In earlier years, hearings were held by the House Judiciary Committee in 1948, and by the Senate Judiciary Committee in 1956. The amendment was reported favorably by the Senate Judiciary Committee in the 80th, 81st, 82d, 83d, 84th, 86th, 87th, and 88th Congresses.

In addition, the bill was debated twice previously by this body, in 1950 and 1953. However, both times this measure was passed it had been amended by the addition of the so-called Hayden rider. That rider provided that the amendment "shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law, upon person of the female sex." All supporters of the amendment agreed that the rider effectively destroyed the intended result of the amendment. For it is under the guise of "rights and benefits" that women have often been deprived of rights which are available to men.

In other words, the term "rights and benefits," although well-intentioned phraseology, actually has served to penalize women and deny them rights.

It is for this reason that in the 86th Congress, after the Hayden rider had again been added during the floor debate, sponsors of the bill agreed to recommit the bill to committee, rather than have it enacted in that form.

More important, there has been significant new action in this Congress. The Subcommittee on Constitutional Amendments, which I serve as chairman, held 3 days of extensive hearings on the amendment—on May 5, 6, and 7, 1970. We heard 42 witnesses, representing all possible points of view about the amendment, and compiled a record of printed hearings comprising almost 800 pages. The Subcommittee on Constitutional Amendments reported the measure favorably to the full Judiciary Committee on July 28, 1970.

But that is not the full extent of study in this Congress, Mr. President. The Judiciary Committee held a series of additional hearings, including comments from a series of distinguished law professors.

This year for the first time this amendment was debated on the floor of the House of Representatives. And the way in which it was brought to the floor in the House indicates the wide-spread support that this proposal has across the country. Since the House Judiciary Committee had never reported the joint resolution, Representative GRIFFITHS filed a discharge petition and obtained the requisite number of signatures. The bill was brought before the House on August 10, 1970, and passed by the overwhelming vote of 350–15.

So, Mr. President, I think that this record of floor action and at least four separate sets of hearings clearly refutes the charge of inadequate consideration of this bill. This measure has been before us and the subject of general discussion for more than 47 years. Now is the time for action.

Now is the time to stop pretending that we are in favor of women, widows, and children and to actually give them more equal treatment. Representative GRIFFITHS had to resort to the parliamentary discharge petition, and the majority leader had to ask that that measure be kept on the calendar, rather than being sent back to committee, because only by such tactics can we prevent a few people who are opposed to this measure from keeping us from having a chance to discuss it at all.

Of course, the record of committee study and previous floor action does not mean that there is no need for debate in this body. I welcome the opportunity for debate. I know that all of its supporters do, as well. It is incumbent upon this body as a whole to consider carefully all the issues raised by the joint resolution. The amendments of the Senator from North Carolina should be carefully considered. No change should be made in the Constitution without complete study and full debate. But I think that when my colleagues study this proposed amendment and the record of the hearings which have been held, they will conclude along with me that it is the Senate's turn to act. It is time to assure equality of legal rights for all our citizens.

NEED FOR AMENDMENT

Some opponents of the equal rights amendment argue that it is unnecessary. They feel that the 14th amendment together with a series of statutes have ef-

fectively eliminated the type of discrimination which the equal rights amendment would make unlawful. I disagree.

Let there be no doubt about it. We have made considerable progress in recent years. Especially in the last few years the courts have taken great strides toward providing the kind of equality I believe is necessary. I believe that if given enough time the Supreme Court would eventually hold that the equal protection clause of the 14th amendment demands the kind of equality between the sexes which the equal rights amendment would guarantee. But that process would take far too long in my judgment. As Professor Emerson pointed out, the Congress should act now because "There is, in short, a certain amount of legal deadwood which must be cleared away before the courts will be prepared to make clearcut and rapid progress."

Mr. President, inasmuch as our distinguished colleague, the Senator from North Carolina, has challenged the assertions contained in Mrs. GRIFFITHS' letter read by our majority leader, I ask Senators to read the case of *Hoyt* v. *Florida*, 368 U.S. 57 (1961), which involved a Florida statute which did not treat women equally in relation to their availability for jury service is concerned. I think if anyone reads that case and places a reasonable interpretation upon it, he would come to the contrary conclusion.

It seems to me that the Supreme Court has never interpreted the 14th amendment as treating women as truly equal.

A three-judge panel in *White* v. *Crook*, 251 F. Supp. 401 M.D. Ala. (1966), struck down an Alabama statute denying women the right to serve on juries. That case was not appealed to the Supreme Court, and the Supreme Court has not spoken on the matter since then.

The case of Phillips against Martin-Marietta is presently before the Court on certiorari. But if we look at the Government's argument against Martin-Marietta, they do not make their case under the 14th amendment. They make a case based upon title VII of the Civil Rights Act of 1964. They do not make it on the right of women to be treated as equal persons under the 14th amendment.

I cannot see how anyone conversant with the law can look at the Hoyt case and deny the fact that there the Supreme Court of the United States permitted a State statute to stand which, in essence, denies women the same right and opportunity to serve on juries as men. This will come out in the debate, I am sure, in greater detail.

Mr. President, the courts have not been alone. In 1963, Congress passed the Equal Pay Act. It provides that no employer subject to the act shall discriminate in salary "because of sex between different employees for equal work on jobs the performance of which requires equal skill, effort, and responsibility." Another important step was taken in title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of sex, in addition to race and national origin.

It was this section of the Civil Rights Act of 1964 on which the Government bases its contention that Martin-Marietta discriminated against Mrs. Phillips. The Supreme Court has now granted certiorari in that case. As I read the 14th amendment's language, it should encompass women. But just because it ought to does not mean that the court has not interpreted it in this manner. Hoyt was decided by the highest court in the land.

The State legislatures have also made great forward strides in recent years. Many of them have worked hard to eliminate discrimination against women in terms of limitations on hours and conditions of work, minimum wages, the age of legal majority, jury service, and many other areas.

Indeed, we have made progress, through Federal and State legislation, through judicial decisions, and through executive action. But much remains to be done.

Let me provide only a few examples. If we are really concerned about these mothers and widows and children, let us look at a few examples of the laws that exist today and see how they treat these women and widows and children.

Until 1966, three States excluded women from juries altogether. In one State, women—but not men—must register specially to be eligible to serve on juries.

In one State, there is a statute allowing women to be committed for up to 3 years in the reformatory for offenses such as "drug using" and "habitual intoxication," although men cannot be sentenced to more than 30 days for drunkenness. That hardly seems like equality.

In at least eight States women cannot contract or sign leases until they are 21, while men can do so at 18.

If women mature at an earlier age than men, why should we give the opposite right to men in these States where men are permitted to contract at the age of 18 and women are not permitted until the age of 21?

California and four other States require a married woman to obtain a court order before establishing an independent business. Eleven States place special restrictions on the right of a married woman to contract. In three States, a married woman cannot become a guarantor or surety.

Women continue to be discriminated against in admissions to public colleges. In the fall of 1968, only 18 percent of the men entering public 4-year college had received high school grade averages of B-plus or better.

But 41 percent of the freshmen women had attained such grades. One State university has published an admissions brochure saying that "Admission of women on the freshman level will be restricted to those who are especially well qualified." There was no such requirement made for men.

Sex discrimination still exists in the labor laws of every State in the Union except Delaware. And despite contrary decisions under title VII of the 1964 Civil Rights Act by the Equal Employment Opportunity Commission, two Federal appeals courts, and several State attorneys general, a recent survey showed that 51 percent of major employers continue to enforce these restrictions.

Thirty-nine States and the District of Columbia impose limitations on the number of hours worked by women. These provisions often preclude women from occupying supervisory jobs requiring overtime.

This is a specific example of what I mentioned a moment ago.

These so-called protective laws which are supposed to give special privileges and rights to women are really "privileging" them right out of meaningful advancement and opportunities in the employment market.

During the hearings the committee was told that 26 States have laws or regulations which completely bar adult women from certain occupations or professions. For example, in nine States, women are not allowed to mix, sell, or dispense alcoholic beverages.

One witness pointed out that the weight-lifting laws in New York only "protect" women from lifting weights in foundries.

As Prof. Norman Dorsen of the New York University Law School said:

> The theory, apparently, is that some mystical essence in foundry weight lifting will injure women, while lifting the same weights in other industries, will not.

Mr. President, those are a few specific examples of some of the discrimination that is going on. I will not bother the Senate with a further list of detailed acts of discrimination, but it is going on. Chapter and verse will come out in the RECORD.

Mr. President, it is clear that there is a legal need for the equal rights amendment. But to my mind the most important reason for enacting this amendment is its symbolic value. The amendment will not eradicate, immediately upon passage, all the unduly discriminatory habits and customs of this country. No amendment or statute could immediately solve the whole problem of unfair discrimination based on sex. The bulk of the prejudice and unfairness against women does not stem from the command of specific statutes. It is much more subtle. It comes from socially engrained ideas about the "proper role of women."

We want to make sure women have the dignity and legal status to which they are entitled. As the Senator from Kentucky pointed out, it is a proper role for women to pay taxes, it is a proper role to serve in the Armed Forces, in philanthropic agencies, and to nurse the sick and administer to the poor, and it is a proper role to provide all sorts of services to the country. Those are proper roles. But many males believe that this "proper role" should keep women from developing their full potential.

But I believe that passage of this amendment will go a long way toward providing the kind of dignity and legal status to which every American is entitled. It would prod the courts into taking long-overdue action. It would prod many employers into reevaluating their

employment practices, to see whether they, too, hire, assign work, and determine pay scales on the basis of sex, instead of making those decisions on the basis of an honest evaluation of each individual's personal abilities.

The addition of this amendment to the Constitution will symbolize the dedication of this country to providing true equality for all. It will show the world that all our citizens are in fact equal in the eyes of the law. We must not minimize the importance of such symbolic action. Even if there were no State discrimination which would be made illegal by the passage of this amendment, I would still be an ardent proponent.

For the past hundred years we have been in the midst of a peaceful revolution, to make sure that all our citizens, whether or not part of a minority, are truly equal. An explicit statement in our Constitution that both sexes are equal before the law is long overdue.

EFFECTS OF THE AMENDMENTS

Some critics, Mr. President, have charged that this amendment should not be passed by this body because it would cause chaos in the courts, and upset many relationships in our society. I strongly disagree. When this joint resolution was brought before the House of Representatives, Representative GRIFFITHS explained exactly what the amendment would and would not do. I ask unanimous consent to have an extract from her statement printed in the RECORD at this point in my remarks.

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

STATEMENT BY MRS. GRIFFITHS

What will be the effect of the amendment?

The amendment would restrict only governmental action, and would not apply to purely private action. What constitutes "State action" would be the same as under the 14th amendment and as developed in 14th amendment litigation on other subjects. In 1964 Civil Rights Act granted far more rights to women and other minorities than this amendment ever dreamed of. That act applies against private industry. This amendment applies only against government.

Special restrictions on property rights of married women would be unconstitutional; married women could engage in business as freely as a member of the male sex; inheritance rights of widows would be same as for widowers.

Women would be equally subject to jury service and to military service, but women would not be required to serve—in the Armed Forces—where they are not fitted any more than men are required to so serve.

The real effect before this amendment is finally passed would probably be to permit both sexes to volunteer on an equal basis, which is not now the case.

Where the law confers a benefit, privilege or obligation of citizenship, such would be extended to the other sex, i.e. the effect of the amendment would be to strike the words of sex identification. Thus, such laws would not be rendered unconstitutional but would be extended to apply to both sexes by operation of the amendment. We have already gone through this in the 15th and 19th amendments.

Examples of such laws include: minimum wage laws applying only to women; laws requiring lunch periods and rest periods only for women; laws which permit alimony to be awarded under certain circumstances to wives but not to husbands would permit the Judge to determine who gets the alimony. Social security and other social benefits legislation which give greater benefits to one sex than the other would extend the benefits to the other sex.

Any expression of preference in the law for the mother in child custody cases would be extended to both parents—as against claims of third parties. Children are entitled to support from both parents under the existing laws of most States. Child support laws would be affected only if they discriminate on the basis of sex. The amendment would not prohibit the requiring of one parent to provide financial support for children who are in the custody of the other.

Where a law restricts or denies opportunities of women or men, as the case may be, the effect of the equal rights amendment would be to render such laws unconstitutional.

Examples are: hours and weight lifting laws but four States have repealed "so-called" protective legislation which restricts women: Delaware has repealed all restrictive legislation in 1967, and there has never been a lawsuit. The idea that this would cause unlimited lawsuits, is ridiculous. Georgia has repealed its hours law. Oregon and Vermont have repealed their hours laws. Fifteen States have declared such laws unenforceable either through action of their supreme court or by some official of the government: Arizona, District of Columbia, Maryland, Kansas, New Mexico, Michigan, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, North Dakota, Tennessee, Virginia, and Wyoming.

And let me say that there has never been an hours law which keeps a woman from working more than 40 hours a week. This is just not true. The law prohibits an employer from employing her. She can work 16 hours a day, and there is nobody that protects that woman—certainly not the AFL–CIO.

Separation of the sexes by law would be forbidden under the amendment except in situations where the separation is shown to be necessary because of an overriding and compelling public interest and does not deny individual rights and liberties.

For example, in our present culture the recognition of the right to privacy would justify separate restroom facilities in public buildings.

The amendment would not change the substance of existing laws, except that those which restrict and deny opportunities to women would be rendered unconstitutional. In all other cases, the laws presently on the books would simply be equalized, and this includes the entire body of family law. Moreover, this amendment does not restrict States from changing their laws. This law does not apply to criminal acts capable of commission by only one sex. It does not have anything to do with the law of rape or prostitution. You are not going to have to change those laws.

Mr. BAYH. The statement points out eloquently what this measure will do and what it will not do. One particular passage of importance, I think, is the discussion of the draft. I do not agree with the contention of some persons that if this measure becomes law women will automatically be drafted.

As Mrs. GRIFFITHS pointed out, in some cases the existing legal distinctions based on sex will be retained because of "an overriding and compelling public interest." I think that such an interest is present here. Combat duty is more dangerous and demanding than any other job. Because combat demands absolutely unique abilities, Congress might justifiably decide that women are not physically suited for it, just as it has decided that men without the requisite physical characteristics are not suited. And since all soldiers must be trained for combat duty, there is no reason to believe that women would be drafted any more than men who are not considered, in the judgment of Congress, to be suited, are drafted. The only likely effect of the amendment would be to prevent Congress from setting arbitrary limits on the number of women who may enlist, unless those limits are directly related to the proven needs of the military. The amendment would thus allow those women who wanted to serve to volunteer.

Some have charged that this amendment would end the benefits that women, particularly in their role as wives and mothers, enjoy. However, the purpose of the amendment is not to cut down benefits accorded to only one sex, but to extend them to both sexes. Prof. Norman Dorsen of the New York University Law School put it this way:

There is abundant evidence that if the amendment is ratified it would result in the general extension of certain benefits to men that now are available only to women, rather than invalidating them altogether.

I cite but one example, but it is of significance to all of us. What do we do when we have broken families? There has been much discussion of the problem of alimony. Some say if this measure passes it will prevent the proper support of people from broken homes.

The passage of the equal rights amendment would not make alimony unconstitutional. It would only require a fair allocation of it on a case-by-case basis. In the great bulk of cases, women would still receive alimony or support payments. I see no reason not to make all men eligible for alimony, as is already the case in nearly one-third of the States. A man might justifiably collect, for example, if the man were disabled and unable to work, and the woman was independently wealthy.

We are suggesting that we should make uniform the practice presently followed in one-third of the States. In those States the questions of who should provide alimony and child support, are decided on a case-by-case basis. In most cases the man would provide it, but in the case I mentioned earlier, if the man were crippled and unable to work, and if the woman has independent sources of income, it seems to me the judge ought to be able to take that into consideration.

One of the most eloquent discussions of the impact of this amendment on family law was given before the full committee hearings by Professor Dorsen.

Mr. President, I ask unanimous consent that excerpts from Professor Dorsen's testimony relative to family law be printed in the RECORD.

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

STATEMENT OF PROF. NORMAN DORSEN BEFORE THE SENATE JUDICIARY COMMITTEE ABOUT EFFECTS OF THE EQUAL RIGHTS AMENDMENT ON FAMILY LAW

Concern has been voiced that women would lose their right to support and alimony if the Equal Rights Amendment passes.

There are several answers to this concern. First, as already noted, the right to alimony and support can be extended to men by legislative act or as a matter of interpretation of the Amendment. Indeed, in one-third of the states alimony can be awarded to either spouse, and is based on the circumstances of the particular case, such as relative economic needs, duration of the marriage, and relative contributions to the marriage.

As for the right to support, although it has been much relied on, it is of somewhat illusory value to women. In the first place, in most jurisdictions not until the parties are separated, or sometimes even divorced, does a wife have the right to get a court order for a specific amount of support money. See H. H. Clark Law of Domestic Relations 181, 186 (1968). More important, the chief legal remedy for the wife during marriage—the ability to purchase household "necessaries" and charge them to the husband—is of far less value than is generally believed. As one authority has stated:

"The doctrine of necessaries may once have been an effective way of supporting wives and children (though one doubts it). Today, however, it is hedged about with so many limitations that few merchants would wish to rely on it. More importantly, it is of least value to those most in need of support, those wives and children too poor to be able to get credit. For these reasons the doctrine is of little practical value in the solution of the non-support problem." Clark, supra at p. 192.

The National Conference of Commissioners on Uniform State Laws recently adopted a Uniform Marriage and Divorce Act which takes an approach similar to that contemplated by the Equal Rights Amendment. It provides for alimony or maintenance for either spouse, and child support by either or both spouses, by defining all duties neutrally in terms of functions and needs of the people involved, rather than in terms of their sex.[1] The action by the Commissioners, a respected and prudent body, deserves special consideration.

Their approach—based on individual circumstances and needs—underlies the Equal Rights Amendment also. Put another way, laws which differentiate on the basis of sex are unjust because they arbitrarily treat all members of a class without looking at individual qualifications. State labor laws are unjust and do not protect women because they arbitrarily assume all women have stereotyped and uniform characteristics, which many individual women do not have. Alimony and support laws also have unjust consequences for both men and women when they assume that all women are weak, dependent, caretakers of children. Just as some men may need alimony, some women may prefer to pay maintenance to allow their husbands to be caretakers of children. In this connection, it is worth observing that several states already require a wife to support a husband unable to support himself.

The Uniform Marriage and Divorce Act eliminates definitions based on sex and substitutes those based on function. This is what the Equal Rights Amendment is intended to do. By passing it, we will help insure more genuine protection for those who really need it, and end the many injustices women still face.

Mr. BAYH. Mr. President, protective labor legislation is also an issue in this debate. It has been said that women workers would be exploited if this legislation were nullified by passage of the equal rights amendment. Of course, protection of workers against unethical or unhealthy labor practices is of the utmost importance. Therefore, we were especially careful to explore this charge carefully at our hearings.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point in my remarks the complete statement of Professor Dorsen relating to the problem of protective labor legislation.

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

STATEMENT OF PROF. NORMAN DORSEN BEFORE THE SENATE JUDICIARY COMMITTEE ABOUT THE EFFECTS OF THE EQUAL RIGHTS AMENDMENT ON LABOR LEGISLATION

I would like to turn now to the problem most frequently stressed by those opposing the Amendment—the alleged impact on labor laws that protect women but not men. The fact is that the effect of the Amendment on protective labor legislation provides no sound basis for opposing it.

There are three interrelated points here. First, the crazy quilt of existing state protective laws reveal graphically that there is no consensus on what is needed protection for either men or women, and that much of the legislation, instead of providing solutions to the real problems of women workers, actually "protect" them out of jobs they are perfectly capable of fulfilling. Second, under Title VII of the Civil Rights Act of 1964 much state legislation of this type is being invalidated and will be of no long term importance. Third, such laws that confer genuine benefits can and should be extended to men under the Equal Rights Amendment.

First. The pattern across the country of state laws shows that there is no coherent system of protection provided for women. For instance, while women are allowed chairs for rest periods in 45 states, they are given job security for maternity leaves of absence in *no* state and maternity benefits under temporary disability insurance laws in only two states. Women are even excluded from temporary disability benefits for pregnancy leaves in these two states.

Furthermore, in the benefit areas most people would consider most important—a minimum wage and a day of rest—men do receive substantial protection already. Only seven states have minimum wage laws for women only, but twenty-nine states, plus the District of Columbia and Puerto Rico, cover both men and women. More important, the federal minimum wage law covers both men and women at *higher* rates than all state laws except one (Alaska).

In contrast, maximum hour laws are a major area where men are not covered. Thirty-eight states cover women only, and three states cover men and women. Since the Supreme Court has upheld the validity of maximum hour legislation for both sexes since 1941, one can only suspect that unions have not pushed for maximum hour legislation, given their success in obtaining nationwide minimum wage laws for both sexes. This analysis would give credence to the EEOC and federal court decisions which have concluded that hour laws have been used as an excuse to keep women out of better-paying jobs.

Opponents of the Equal Rights Amendment often neglect to note the twenty-six states which altogether prohibit women from performing certain jobs. When forty states allow women to be barmaids, but ten bar them from this employment, can anyone seriously propose that women are thereby protected in those ten states? If anyone is protected, it would appear to be male bartenders.

Similar explanations suggest themselves regarding the eighteen states proscribing night work, and the six states prohibiting work for periods before and after childbirth. Women have not campaigned to obtain these "protections." This is for a very good reason. Women in fact do night work all the time. Nurses, telephone operators, airline reservationists, and scrub women have not been protected from night work. Pregnant women, too, often choose to work right up to the birth date. Who ever heard of a housewife being allowed time off from her housework and small children just because she was pregnant, or of a state law which prohibited her from working.

Weight laws also are of doubtful protection for women. There are only four states with weight limits applicable to all jobs, and these limits are set so low that, if literally applied, they would prohibit women from doing any serious labor, including carrying an unborn child. In the remaining few states with weight limits, they apply only to certain industries. In New York, for instance, women are "protected" from lifting weights only in the foundries. The theory, apparently, is that some mystical essence in foundry weight lifting will injure women, while lifting the same weights in other industries will not. Possibly it is the male workers in foundries who are being protected—from job competiton.

Thus, when all of the state laws applying only to women are examined closely, it becomes clear that they do not provide a coherent system of meaningful protection. Nor do they deal with the real problem for women—exploitation by being underpaid and funneled into the lowest-paying, most menial jobs of our society. State labor laws have never dealt with this problem. Furthermore, the premise that real protection can be based on legislating by sex is fallacious.

Sex is an insufficient criterion to predict with accuracy who needs what protection. If injury due to lifting weights is a problem the answer is to forbid employers to fire individuals—both men and women—who refuse to lift weights above a safe limit. If some men and some women don't want to work overtime, laws should be passed forbidding employers to fire those who refuse overtime; both men and women who do want overtime pay should not be penalized.

In short, analysis of state laws that apply exclusively to women does not establish that they protect women in any important way. In fact, these laws do not protect women in the one area clearly applicable to women only—maternity benefits and job security; they are ineffective in dealing with the exploitation of women through lower pay than men; and they are used to dis-

[1] Section 308, which deals with maintenance, is typical of the Act's approach:

(a) In a proceeding for dissolution of marriage or legal separation . . ., the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(1) lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, and (2) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(b) The maintenance order shall be in such amount and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(1) the financial resources of the party seeking maintenance, . . . and his ability to meet his needs independently . . .; (2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; (3) the standard of living established during the marriage; (4) the duration of the marriage; (5) the age, and the physical and emotional condition of the spouse seeking maintenance; and (6) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

criminate against women in job, promotion, and higher-pay opportunities. They do not furnish a reliable basis for opposition to the Equal Rights Amendment.

Second. In light of the above it is not surprising that the Equal Employment Opportunity Commission, the federal agency charged with interpreting and administering Title VII, has concluded that state "protective" laws were superseded by Title VII and could not lawfully be enforced. The Commission stated that:

"Such State laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferances, and abilities of individual females and tend to discriminate rather than protect." 29 C.F.R. § 1604.1(b).

The federal courts are apparently moving in the same direction. These federal district courts—including one within the last month—have now squarely held that Title VII supersedes such restrictive state laws. In addition, both the Fifth and Seventh Circuits have held that company-imposed restrictions, paralleling state laws—that is, placing private weight limits on women's jobs—also violate Title VII. For instance, in *Weeks* v. *Southern Bell Telephone & Telegraph Co.*, 408 F. 2d 288 (5th Cir. 1969), the court set a stringent standard for establishing a "bona fide occupational qualification" exception to Title VII. This is the exception under which employers have argued that state laws allow them to discriminate against women workers. The *Weeks* court held that:

The employer has the burden of proving that he has reasonable cause to believe, that is a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved.

Some states have also taken action under Title VII. Delaware has repealed all its labor laws for women only. So far, there has been no outraged cry from women workers. Five states have repealed their hours laws; in six states and the District of Columbia, the Attorneys General have ruled that state laws are superseded by Title VII or state fair employment practices laws; in another six states, women workers covered by the Fair Labor Standards Act are exempted from the state laws; in two states, there are no prosecutions under state laws; in two states, there are exemptions from laws if the employee voluntarily agrees; and in one, the weight lifting regulation has been extended to men. In other words, twenty-two states and the District of Columbia have already repealed or greatly weakened the effect of the state labor laws on women.

Given this action of the EEOC, of the Federal courts, and of the States, can we really say that the impact of the proposed amendment on State labor laws furnishes any basis for opposition to it? We must recognize that these laws are already invalidated or being invalidated. It appears that opponents of the amendment are trying to erect bridges which were crossed five years ago, when Title VII went into effect.

Third and finally with respect to State labor legislation. There is abundant evidence that if the amendment is ratified it would result in the general extension of certain benefits to men that are now available only to women rather than invalidating them altogether. I recognize that this issue has been the subject of some controversy before the Committee. Nevertheless, I suggest there is ample precedent already on the books to substantiate the conclusion that the fears of wholesale elimination of benefits for women are unwarranted.

In the first place, until Title VII the EEOC has consistently held that laws giving women benefits—such as a lunch break—must be extended to men. The Seventh Circuit has indicated it would be the same, when it held in *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969), that the company-imposed weight limit could be validly extended to men under Title VII, provided the company allowed members of either sex to show he or she could perform the job in question. And Georgia took a similar approach to its weight-lifting regulation, which was extended to men and rephrased to prohibit "strains or undue fatigue" rather than a set weight limit.

In other areas of the law, courts have also indicated a willingness to extend benefits to a class of people unconstitutionally excluded from the benefit, rather than voiding the law under which the class was improperly excluded. As long ago as 1880, in *Neal* v. *Delaware*, 103 U.S. 370, the Supreme Court ruled that a state constitution giving whites only the vote was not void under the Fifteenth Amendment, but rather that the right to vote must be extended to blacks. Likewise, in *Levy* v. *Louisiana*, 391 U.S. 68 (1968), when a Louisiana statute denied illegitimate children the right to recover for their mother's wrongful death, the Supreme Court held that the Fourteenth Amendment required the extension of protection to them rather than voiding the legitimate children's right to recover.

Clearly, if the courts have authority to extend benefits to an excluded class under the Fourteenth and Fifteenth Amendments, they will have the same authority to extend benefits under the proposed Equal Rights Amendment. Moreover, courts have a general obligation to interpret instruments reasonably. If this means granting a day of rest to men, rather than destroying this right for women, the courts should and presumably will follow that path, especially in view of the very ample expression of opinion by members of the Congress and witnesses that some protective laws should be extended to both sexes rather than voided.

Finally, with respect to this problem, we should not lose sight of the fact that the Congress and state legislatures will have the opportunity to enforce the Amendment and fashion its general command to specific situations in a comprehensive and reasonable manner.

Mr. BAYH. Mr. President, to my mind these arguments effectively refute the charges that the equal rights amendment would disrupt family law and protective labor legislation in the States. I would also, however, like to call to the attention of the Senate the probing analysis of Prof. Thomas I. Emerson of the Yale Law School. He described the effect of the amendment on our legal system as follows:

First, the courts are entirely capable of laying down the rules for a transitional period in a manner which will not create excessive uncertainty or undue disruption. Actually the courts face similar problems every time they hold that part of a statute is unconstitutional, and they have developed detailed rules for handling these issues under the concept of "separability" (or "severability"). The essential question is whether the legislature would have intended the statute to stand in its modified form. In making this decision the courts have the aid of legislative history, which can be supplied in this case. There is no reason to suppose, therefore, that formulation of a coherent legal theory applicable to the Equal Rights Amendment is too complex or too difficult for the legal system to cope with.

Second, there has been a great deal of talk that passage of the Equal Rights Amendment will cause vast changes in many features of our national life. I am inclined to feel that the alarms and warning are, as usual, overplayed. Whether that be the case or not, however, if such great changes do occur it will be only because they are necessary. Those opponents of the measure who stress this aspect of the Amendment are acknowledging that widespread discrimination against women persists throughout our society.

Third, it has been argued that adoption of a constitutional amendment will bring about, almost inadvertently, drastic alterations in important institutions of society before there has been time to work out the major policy changes required by the new provision. The example most frequently given is the Selective Service system. But one need not conclude that, in those few areas where major new policy must be formulated, there is not adequate time in which to do it. If Congress adopts the Equal Rights Amendment it will surely have full opportunity during the period of ratification by the States to take up amendments to the Selective Service Act. Other areas of our law, such as the marriage and divorce laws, may need similar attention from State legislatures. It is not a weakness but a strength of the Amendment that it will force prompt consideration of some changes that are long overdue.

Mr. President, I think that I have shown that there is indeed a great need for the equal rights amendment. We must make it abundantly clear for future years that we will not tolerate discrimination based on sex, instead of the attributes of each individual. I think, further, Mr. President, that there is ample evidence to show that this measure has been fairly and completely studied. It is legally sound. As Professor Emerson concluded:

My conclusion from this survey of the legal problems raised by the Equal Rights Amendment is that the method chosen is the proper one and the instrument proposed is constitutionally and legally sound. I urge the Senate to accept the pending Resolution and submit the Amendment to the States for ratification.

I can only repeat what Professor Emerson said. The amendment is needed. It is sound. It has been passed by the House. Now it is time for this body to act.

Mr. President, I ask unanimous consent to have the following material printed in the RECORD at the conclusion of my remarks:

A letter and statement from Prof. Robert Braucher of the Harvard Law School, expressing his support for the equal rights amendment;

An excellent article on Women in the Law, an empirical study by Dorothy Glancy of the Harvard Law School;

A summary of State Labor Laws Affecting Women, prepared by the Department of Labor;

A legal memorandum on the Age of Majority;

A legal memorandum on Women as Jurors;

A paper by Susan Deller Ross of the New York University Law School on Sex Discrimination and Protective Labor Legislation;

An article by Faith Seidenberg from the Cornell Law Review on trends in the law of women's rights;

A telegram indicating support for the proposed amendment from members of the Harvard Law School faculty; and

A legal memorandum by Carol Sher-

man of the Harvard Law School on the effects of the equal rights amendment.

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

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass. September 4, 1970.

Hon. BIRCH E. BAYH,
U.S. Senate,
Washington, D.C.

DEAR MR. SENATOR: Enclosed is my statement in support of the Equal Rights Amendment, for such use as you care to make of it. The statement was stimulated by my personal discussion of the subject with my colleague, Professor Freund of the Harvard Law School, who I understand will testify against the amendment next week. Although the statement is my own, I am also authorized to represent the Unitarian Universalist Association in its endeavor to secure passage and ratification of the Amendment.

Ordinarily I have the highest respect for Professor Freund's judgment on constitutional problems, and I have been puzzled by his uncharacteristically stand-pat views on this subject. Perhaps it is relevant that he has been a life-long disciple of Mr. Justice Brandeis and that the justice made much of his reputation in the famous case of *Muller* v. *Oregon*, where he argued successfully that a state could constitutionally limit the working hours of women. Of course such limitations now serve primarily as a device to discriminate against women, and are a primary target of the proposed amendment.

In any event, I urge you to stand firm in support of the amendment.

Sincerely,

ROBERT BRAUCHER,
Professor of Law.

STATEMENT IN SUPPORT OF THE EQUAL RIGHTS AMENDMENT FOR THE UNITARIAN UNIVERSALIST ASSOCIATION

(By Prof. Robert Braucher)

I am Robert Braucher, Professor of Law in Harvard University, Republican, chairman of the National Commission on Consumer Finance by appointment of President Nixon, and a Massachusetts Commissioner on Uniform State Laws by appointments of Governors Herter, Furcolo, Peabody and Sargent. I was chairman of the committee which prepared the Uniform Law Commissioners' Model Anti-Discrimination Act, in which prohibitions against discrimination on account of sex were included. I speak for myself and for the Unitarian Universalist Association in endeavoring to secure passage and ratification of the Equal Rights Amendment.

It is argued against the proposed Amendment, first, that it is unnecessary in view of the equal protection clause of the Fourteenth Amendment and the Civil Rights Act of 1964, and, second, that to the extent that it goes beyond existing law it opens a "Pandora's box" of unknown problems. My argument in response is: first, that it is extremely unclear at the present time whether the law provides the same equality for women that it provides for Negroes; second, that the "Pandora's box" has already been opened; and, third, that true equal protection of the laws for women can be achieved in a more orderly and legitimate way by cooperative effort of legislative, executive and judicial branches of Federal and State governments, responding to a Constitutional Amendment, than could ever result from the most enlightened and progressive decisions of the Supreme Court.

The present law.—The latest pronouncement of the Supreme Court, in *Hoyt* v. *Florida*, 368 U.S. 57 (1961), upholds a provision as to women jurors that would have been obviously unconstitutional as to Negro jurors. A pending case, *Phillips* v. *Martin Marietta Corp.*, 411 F. 2d 1, 416 F. 2d 1257 (5th Cir. 1969), cert. granted March 2, 1970, upholds a discrimination against women in employment on a theory which would be absurd and tragic if applied to Negroes. It is to be hoped that the Supreme Court will overrule the jury case and reverse the employment case, but the justices would undoubtedly feel more secure in taking such action if they could be confident that they were moving in harmony with rather than in opposition to the elected branches of the Government.

The unkown problems.—Many of the problems have been identified. At the one extreme, few people would defend today a rule that women are forbidden to serve alcoholic beverages, though the Supreme Court upheld such a prohibtion in *Goesaert* v. *Cleary*, 335 U.S. 464 (1948). At the other extreme, the advocates of the Equal Rights Amendment do not believe it would require maternity leave for men or the repeal of laws against rape. In between are the much-discussed problems of selective service, a host of restrictions on women often euphemistically labelled "protections," and a host of senseless differences between men and women as to capacity to contract, capacity to marry, the burden of being treated as adult criminals, the power to manage their own property, the right to various retirement benefits, and the distribution of property on the death of the owner. All should be eliminated.

The need for cooperative effort.—Judicial reform of obsolete laws under the banner of "equal protection of the laws" is likely to savor of usurpation when the obsolete law is hallowed by widespread acceptance over a long period of time. Moreover, when the question is whether men and women should both be entitled to social security benefits at 62 (the present rule for women) or at 65 (the present rule for men), judicial decision is likely to be far more disruptive and confusing than a clear-cut legislative decision, with a clear effective date and a provision for funding. A Constitutional Amendment gives the judges a mandate to which they can respond with confidence that they are in step with the democratic process. It also gives the legislatures, both Federal and State, a mandate to make the numerous choices needed, and I would hope that those who sponsor the Amendment would after ratification sponsor implementing legislation. Congress need not enter into all the areas traditionally left to the States. If a State legislature leaves a law on the books that a married woman has capacity to buy a house at 18 but her husband does not until he is 21, at least the judges will know that they are authorized to do modern justice.

The equal protection clause of the Fourteenth Amendment has been on the books for more than 100 years. It was clearly designed to provide equal protection for Negroes, and we are at long last beginning to see actual protection for Negroes. This did not happen by judicial decision alone; it required action by Congress and the President as well, and it will not be fully effective until State and local governments fully cooperate. It is not at all clear that the Fourteenth Amendment was intended to establish equal protection for women, and it is very clear that it has not done the job. I hope it will not take 100 years to establish equal protection for women. However long it takes, it is time to start. And the best start is a fundamental declaration of national policy, clearly legitimated by the full democratic process as the Supreme Law of the Land.

[From the Harvard Law School Bulletin, June 1970]

WOMEN IN LAW: THE DEPENDABLE ONES

(By Dorothy J. Glancy)

Harvard Law School had been in existence for more than 130 years before it began to admit women as candidates for the LL.B. (now J.D.) degree. In the last seventeen years approximately 240 women have received law degrees from Harvard.[1] What has happened to these rather extraordinary women since they left the Law School? Are they practicing law? Raising children? Making as much money as their male counterparts? Facing bitter discrimination? Rather than leave the answers in the realm of mythology and speculation, some of the women students became interested in discovering the facts. They proposed to Dean Derek C. Bok that a survey be conducted of all the women graduates of the Law School, and he agreed to support such a project. By late February, 1970, I formulated and mailed a questionnaire to 825 men and 238 women graduates of the Law School. By the last week of April, 565 replies from 400 men and 165 women had been keypunched and analyzed by an IBM Computer-7094.

The subjects for the survey were seleted by matching each woman with men who were in the same class and had about the same grade average. The idea was to find out if there were any differences in post Law School performance and attitudes of men and women who were similarly situated at the time they graduated.[2] As it turns out, the differences are neither so great nor so pervasive as one might expect, but there are differences and even a few surprises.[3]

Like all of the other information reported in this study, the figures are, of course, only as accurate as the responses received. Errors in memory, in understanding of the questions, or in the recording of the subjects' responses may have affected the results. Moreover, the results reflect only generalized percentages of the men and women in the sample. They should not be extrapolated to indicate the characteristics of any individual man or woman, but only the general tendencies of the class. The sample being relatively small may not be representative of all men and women graduates of Harvard Law School, much less the entire legal profession.

BACKGROUND

The men and women in the sample tended to have come to Harvard Law School from basically similar academic backgrounds. Almost 50% of both men and women graduates came from co-educational undergraduate colleges, although the women tended to have come from small colleges, with less than 3,000 students.

Only 66% of the women in the sample are married, as compared with 81% of the men. The divorce rate is low—only 5% of the sample indicated that they have been married more than once, with no difference between the men and the women. Of the married women in the sample 63% were married to lawyers. Interestingly enough, only 2% of the married men were married to lawyers. This seems like a very large differential until one stops to realize that fewer than 3% of the nation's legal profession is made up of women lawyers. (There simply are not enough to go around.) Very few of the spouses of both sexes seem to disapprove of a legal career. But the husbands of the women lawyers tended to be more enthusiastic or approving of their lawyer-wives legal careers than the wives of the men in the sample. Only 69% of the married women indicated that they have children, as compared with 82% of the married men. In addition, the women in the sample, had fewer children, only one or two, (73%) than the men (58%). This difference may be explained by the fact that a larger proportion of the women are younger than the men. But when controlled for a number of years out of Law School, the women in each of the three general age groups continued to show a greater tendency to have only one or two children. One could speculate that the legal careers for women have tended to limit the size of their families.[4]

Footnotes at end of article.

PLACEMENT

Because of the way in which the sample was selected (by matching men and women graduates for grade average) the results do show much the same overall performance in Law School, including membership on the *Law Review*, Board of Student Advisers and Legal Aid. When it became time to look for a job, about a third of both men and women secured employment through the Placement Office and almost half of the sample through independent application. But the women were likely to have more interviews than the men. Twenty-three percent of the women reported having had 12 or more interviews as compared with 15% of the men. Even though most men had fewer interviews, they had more firm job offers whereas only 45% of the women received two or more offers.

Only about 13% of both men and women reported receiving no offers at all. One might say then, "Well, what are the women complaining about, at least they are as likely to get jobs as the men." But that is not the point. What is important is that the women's choices were more circumscribed than the men's. Such a restriction on the women's opportunity may substantiate the impression of some women graduates that they are treated by some interviewers as "freak[s] . . . Perhaps a pleasant or stimulating interview, but never something to be taken seriously—certainly not to hire." This attitude is not the overt discrimination for which the Placement Office threatens stern reprisals. It is a more subtle sort of attitude on the part of some members of the legal profession that a woman lawyer or law student will be neither as good nor as useful as her male counterpart. This negative attitude, ordinarily given the harder-sounding name of prejudice is, we hope, withering away with the advent of more and more women in all aspects of the legal profession. In fact, one of the most striking aspects of the survey is that we found no evidence to substantiate this negative attitude.

EMPLOYMENT

Of all of the rationalizations used to support the negative attitude toward women lawyers, perhaps the most frequently expressed is the assertion that women law students do not use their legal training—they "cop out" and become "mere" housewives and mothers. The fact is that almost all of the women graduates of the School are employed (84%). Admittedly this figure is somewhat lower than the men (98%) who are employed.[5] Virtually all (90%) of these women seem to have left the legal profession because they have very young children. Almost all of the 16% not now employed were employed immediately after they graduated from Law School and stated their intention to practice law again in the future.

Some of the women indicated that if there were adequate child care available this hiatus would be sharply reduced. Given enough public concern and support, perhaps there will be day-care centers in the future. It would be possible, for example, for a law firm or a business to organize really adequate centers for the children of all the lawyers, secretaries and other personnel, probably on some sort of charge-for-use basis. Were such facilities available, probably a much smaller portion of women lawyers would find it necessary to leave their legal careers.[6]

Short of the more radical proposal suggested above, law firms and businesses should reassess their positions on the hiring of lawyers (men or women) part-time. Almost 25% of the women graduates now working indicated that they are working less than full time.[7] Moreover, as many as half the women not now working expressed a desire to work part-time while their children were young, if they could only find a law firm or business which would agree to hire them on that basis. However, of those who answered the question, over 62% (and a significantly higher percentage of men than women) did not feel that "law firms tend to be willing to work out arrangements for those women attorneys who want to work only certain hours so that they can be with their families." This kind of inflexibility on the part of firms results both in a senseless waste of legal talent and in needless frustration for women attorneys who want to work but can do so only part-time.[8]

POSITIONS

But what about the 84% of women graduates who are working? What are the characteristics of the occupations in which they are engaged? The short answer is, of course, diversity. But in more specific terms, there are some aspects in which the women in the sample differ significantly from the men. Over half of both men and women in the sample are practicing with law firms or as sole practitioners. But a much higher percentage of men (72%), than women (52%), initially went to work for a law firm upon graduation. From the women's comments there seems to have been a reluctance on the part of some law firms to hire women attorneys.

By the time the men had reached their present positions, a large percentage had shifted out of law firms and into business positions, while about half of the women remained in law firms, primarily in firms with fewer than 50 members. The Federal Government initially employed a slightly greater proportion of women in the sample (16%) than men (11%). But this differential has leveled out so that at present, only about 7% of both men and women are employed by the Federal Government. It appears that the women who left the Federal Government went primarily into state and local government, business and such specialized positions as non-profit foundations. Legal Aid accounts for a significantly larger proportion of the women (9%) than the men (1%).

About half the respondents (slightly more men than women) indicated that they are also employed in one or more additional positions besides their primary employment. The men are evenly spread out between private practice, teaching, consulting, business and "other". Almost no women (only 1%) responded that they are engaged in private practice as additional employment as compared with 5% of the men. The women also consult part-time only half as frequently as the men. A few of the women who checked "other" noted that this additional employment is housework ("exclusive of wife-and-mothering," as one woman phrased it), which takes anywhere from 15 to 40 hours a week.

PUBLIC SERVICE

I had expected that most of the recent Harvard Law School graduates would be engaged in some sort of public service activities. About half of the sample indicated that they devote some of their time to volunteer public service work. Of those who do, almost all of them devote no more than five hours per week to it. More, approximately two-thirds of the sample (and men somewhat more than women), indicated that they engage in non-compensatory public service activities during their business time. About half of those engaged in such business public service devoted less than 5% of their business time; an additional third of those engaged in business public service devoted from 5% to 15% of their business time. Most respondents, women slightly more frequently than men, indicated that these public service activities are law-related.

Those lawyers in law firms and legal education tend to do more than their share of this public service work—almost 75% of the men and women in the sample who are employed by law firms, and 82% of those in legal education indicated that they do public service work during their business time. In contrast, only about half of those employed in businesses said that they engaged in such public service activities.

FIELDS

Although women from Harvard have succeeded in making a place for themselves in virtually every field of law, there are some fields in which women seem to be either over-represented or under-represented. It was to be expected that a large number of women would work in fields where they have been traditionally accepted, for example, poverty law, family law, as well as in trusts and estates, probate, real estate and tax (where a fairly large proportion of both men and women lawyers in the sample practice). But a high proportion of the women also indicated that they practice in legislation, as well as the traditionally male fields of corporate and commercial law and litigation. A much larger proportion of the men lawyers, however, is engaged in the practice of corporate law (50%), litigation (24%) and commercial law (24%).[9]

Almost one quarter of the men indicated that they are engaged in general practice, as opposed to only 9% of the women. This tendency of women not to go into general practice, but rather to specialize was also noted by Professor James J. White in his study, "Women in the Law."[10]

MOBILITY PATTERNS

Most of the above findings were fairly predictable. The real surprises came in the mobility patterns in and out of the particular fields of law. The percentage of both men and women now practicing in poverty law is double that indicated for initial employment. Conversely, litigation is indicated by both sexes only about two-thirds as frequently for present employment as for initial employment. It seems that Harvard Law School graduates are shifting out of litigation and into poverty law, although the same individuals may not be involved. Even more striking is the mobility of women out of corporate law. The men indicated that a few more of them are practicing corporate law in their present positions than they were initially. In contrast, the women tended to practice corporate law in their initial position about 50% more frequently than at present.

This mobility of women lawyers out of corporate work probably indicates an atmosphere inhospitable to women. If, as almost a third of the lawyers in the sample *voluntarily* asserted, men, and women are equally capable of practicing in all fields, it would seem that something is keeping or driving women out of the corporate field. Maybe it is boredom or distaste. Unlikely. Perhaps it is long hours—which the women in the sample indicated they were less likely to work—but there is no indication that corporate work requires significantly longer hours than other fields.

The mobility of women out of corporate work is best explained, therefore, by the argument most frequently used to dissuade women lawyers from entering corporate law, i.e., that corporate clients simply will not accept them.[11]

CLIENTS

Women lawyers in the sample indicated that they deal with far fewer clients than the men. For whatever reason, client prejudice is undoubtedly a factor. Twelve percent of the women responded that they speak with no clients in an average week (as opposed to 1% of the men). An additional 37% of the women said they speak with less than four clients (as opposed to 17% of the men).[12]

These facts are strangely inconsistent with the opinions of nearly three-quarters of both men and women who felt that "women attorneys should be allowed to deal with clients." Some clients, perhaps many clients, refuse to deal with women attorneys. It

Footnotes at end of article.

seems incumbent upon the legal profession to bear the responsibility of informing and persuading both its own members and its clients that women lawyers are capable of and deserve the opportunity to practice in all fields in law on an equal basis. One Washington law firm, confronted by a client who refused to work with a woman associate assigned to a problem, replied that the woman attorney was the best lawyer for the job. If the client was unwilling to accept her advice and counsel, that client would have to find another law firm. It took telling the client twice, but the result was that the client accepted the woman lawyer—reluctantly at first, but later with great enthusiasm—and she was found to be capable.

Not every law firm is in a position to do this. Many are, but they are simply unwilling to make the effort or to run the risk of losing a bigoted client.

INCOME

In their initial positions, both men and women received the same salaries. But the present income figure presents a different picture. Fewer than 12% of the women are making more than $20,000 as compared with 57% of the men. These figures indicate that although most women graduates of Harvard Law School can get jobs, and even start out at about the same income levels, most of them will never reach the high-income high-status positions many of their male counterparts achieve. Professor White's study in 1967 showed a similar pattern.[33]

There are at least four factors which may tend to mitigate, but probably do not eliminate, this income differential. First, some fields of law may be more remunerative than others. The sample of 565 was not large enough to run adequate controls on this factor. But even if so-called "women's fields," such as poverty or probate, were to pay significantly less than so-called "men's fields," such as corporate law, that would merely emphasize the injustice of making it difficult for women to practice in the higher paying fields.[34] Second, is the factor of part-time work. Almost all of the women who are employed less than full time (25%) reported incomes of $15,000 or less. But that statistic accounts primarily for the fact that 57% of the women are making less than $15,000 but only 21% of the men. Thus, the percentages fit almost exactly. A third factor, related to the second, is the number of hours a lawyer works. Eighty-seven percent of the men reported that they work more than forty hours a week, as compared with 57% of the women. These figures may be slightly distorted by the number (one-quarter) of the women working only part-time. Even so, the difference is significant, and may account for some, but probably not all, of the upper income differential. Two percent of the women reported that they work more than sixty hours a week—and 2% of the women also report incomes of more than $30,000. For men the relation between long hours and income is less direct: 28% men report incomes of more than $30,000, but only 12% of them are working more than sixty hours a week. In other words, more than twice as many of the men are making high incomes than the long-hour factor would explain.

The fourth factor, which we expected to be most important, is tenure. Comparing the incomes of the men and women who graduated from 1953 through 1959, 84% of the men, but only 30% of the women, report incomes of more than $20,000. Taking the group who graduated between 1960 through 1964, 58% of the men, but only 18% of the women, report incomes of more than $20,000. The most recent graduates, from 1965 through 1969 indicate that 17% of the men are making more than $20,000, but none of the women.[35] It is probable that the number of years a lawyer has been in a position also affects income levels. Seventy-five percent of the women, but only 52% of the men, have been in their present positions less than three years. Similarly, 18% of the women indicated that they have been in their present job seven or more years as compared with 28% of the men. That the men are half again as likely to have been in their present position longer than the women is probably not sufficient to explain the fact that the men in the sample were more than four times as likely as the women to be making more than $20,000. It is improbable that the entire forty-five percentage-point differential between the men and the women can be explained away entirely by this factor. Unfortunately, the sample is not large enough to run all of these controls simultaneously and get any significant results. Are women lawyers discriminated against with regard to income? There is at least a very wide differential between men and women in the upper income brackets.

JOB CHANGES

Of all of the rationalizations used to support a negative attitude toward women lawyers, one of the most frequently asserted is that women lawyers cannot be depended upon. They move around from job to job, it is said, either because of whim, because of maternal responsibilities, or because their husbands move.[36] This assertion is simply not borne out by the facts. Over 55% of the women in the sample have made no more than one change in employment as compared with only 39% of the men. However, 34% of the men have changed employers three or more times as compared with 24% of the women.

LOCATION

We expected that Harvard Law School graduates would tend to congregate in the eastern part of the country, and that women graduates would be inclined to start out in the large eastern cities where law firms and businesses are more receptive to women lawyers. We did not expect to find 73% of the women (as compared with 50% of the men) starting out in New York (31%), Boston (23%) and Washington (19%).

The most surprising difference of all was that 23% of the women, but only 9% of the men, initially worked in Boston. Because 83% of the women started out somewhere in the East (compared with 67% of the men), the rest of the nation did not initially absorb many of the women graduates. At present, both sexes seem to be more dispersed away from Boston, New York and Washington, although these three cities still account for 45% of the men in the sample and 58% of the women. The differentials between the proportions of men and women practicing in most locations have narrowed, particularly in the South which at present accounts for 9% of the men in the sample and 8% of the women. The only area that is still significantly out of balance is the Midwest which accounts for 12% of the men, but only 5% of the women.

MOTIVES

Asking people why they do something rarely elicits real reasons. Asking lawyers, whose metier all too often involves the fine art of obfuscation and ducking hard questions, is probably even more unreliable. However, some rather interesting results came from the survey when the lawyers were asked why they took their initial positions, why they left them and why they took their present positions.

The overall results were fairly predictable—probably because people find it easier (both in the sense of not having to think and in the sense of not revealing themselves) to answer such questions the way they think they are expected to answer them. And so we found that the men in the sample frequently said that they took or changed employment for more remuneration and advancement opportunities; they did so significantly more often than women.

In taking their first jobs, men and women were equally motivated by remuneration; however, it was location that appeared to be the single most important motive. They cited remuneration almost twice as frequently as a reason for taking their present jobs. For the men it seems that the desire or need for more money sets in *after* the first job. This tendency may be explained by increasing family obligations—over 87% of the men are married, and their wives are usually not working (78%). In contrast remuneration seems to become less important to the women as they change from their initial to their present positions. But of the 66% women in the sample who are married, almost all (98%) have husbands who are working. The women, on the other hand, said that they were motivated by intellectual stimulation, socially important problems and opportunities for service.

These motives are thoroughly consistent with the female role in our society, which tends to frown on aggressive women who would come right out and express a desire to compete for advancement and high income.[37] The women preferred to see themselves as helping others rather than competing with them, as developing a private sense of intellectual accomplishment divorced from competitive success.

Interestingly enough, fewer women than expected responded that family, marriage or maternal reasons affected their decision to take or leave employment. But 20% of the women who gave reasons for leaving their first employment stated that they did so because of the birth of a baby—that figure matches well with the 16% of the women in the sample who are not working, since some of the women who left the ranks of the employed to have children have by now returned to their profession. Surprisingly, 3% of the men also left their first jobs because of the birth of a baby. Almost the same percentage of men as women either took or left employment for family reasons—although the men seemed to take their first job for family reasons, and the women were more likely to leave their first job and take their present job for family reasons.

SATISFACTION

When asked about changes in their aspirations, the women tended to say slightly more often than the men that they changed their minds both during and after Law School. By the same token, the women indicated that they would choose an occupation (position, field of law) different from the one they are now engaged in, significantly more frequently than the men. Thirty-six percent of the women (but only 16% of the men) indicated that they are not now engaged in the occupation of their first choice. This relatively high dissatisfaction rate on the part of the women can be read in a number of ways—innate fickleness, general dissatisfaction with everything, a greater willingness to admit dissatisfaction, or some force keeping women graduates out of those occupations, which they would most like to pursue.

It is my impression from the women's comments that it is this latter force that provides the best explanation. It seems to be, in fact, a combination of external and internal factors. Both out-right discrimination, and the subtle dictates of a negative attitude toward women, direct them out of litigation, labor law or corporate work. Rather than fight the system, some women change their minds and redirect their aspirations from such fields to less competitive "women's fields." The result is that many women, therefore, are not doing the kind of work they would most like to do and may be most capable of doing.

There is no excuse for society, and the legal profession in particular, to penalize women for entering the traditionally male fields. It is interesting to note that over a third of the

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lawyers who responded to the questionnaire emphatically commented that whether a man or woman is suited to a particular field or occupation depends primarily on the individual's desires and abilities, not on his or her sex.

The internal factors explaining the higher incidence of dissatisfaction and aspiration change in the women are closely related to the external factors. Time and again women reported a change in aspiration from male-dominated, competitive fields to those fields that have absorbed a large number of women lawyers for years.

As one woman states, "The unfortunate fact about private practice (litigation in particular) is that the characteristics which make you successful, like aggressiveness and desire for material wealth, are often the very qualities that make you an unrewarding human being." She mentions how enjoyable litigation is—"providing you win occasionally." This conflict reaches to the very core of a woman lawyer's identity and rests on top of whatever overt discrimination is impinging on her from the outside. The result is that women lawyers tend to both change their aspirations and to feel less satisfied with their present positions than their male counterparts.[18]

Ironically, when asked whether they would return to Law School if they could make the choice again, the women in the sample tended to be slightly more affirmative than the men, although over 90% of both sexes responded in the affirmative. When asked to elaborate, one woman put it:

Our society takes women seriously only if they have impressive credentials, such as degrees from well-known law schools. I want to be taken seriously . . . so I needed the credentials.

Over ten times as often as the men, the women responded that they would return to law school and Harvard Law School in particular, to gain the status necessary to be taken seriously as well as to do something significant about the problems of society.

ATTITUDES

One of the most interesting portions of the questionnaire was the experimental section through which we hoped to find out something about the attitudes of the men and women, and perhaps even to derive some insights into their psychological make-up.

We experimented with a variety of techniques, although none was perfect because of the absence of control conditions. The responses came back in a wide variety of forms—some of them blank, others confused, and a few outright incensed. But as many as three-quarters of the respondents answered at least part of the attitudinal section.

However, we attempted to adapt a mailed questionnaire to some of the techniques of testing motivation through thematic apperception tests (TAT). The results, although not a valid test of motivation, were intriguing. A true TAT, given under controlled conditions, gives a valid and reliable measure of individual differences in the strength of various motives. The subjects usually are gathered together in a room with an examiner to explain that the subjects will be given four mintues to write a story based on a verbal or pictorial cue, such as a picture of a young boy talking with an older man, or, "After first-term finals, Anne finds herself at the top of her medical school class."[19] Our questions IV 1 and 2 and IV 1 and 2–A, introducing hypothetical lawyers named George Andrews and Barbara Robbins, as Deputy Solicitor General and partner in a large New York law firm, were similarly designed.[20]

I was interested in finding out whether the women in the sample showed the expectancy of negative consequences from success, or anxiety about success, which Dr. Horner has found repeatedly in from 65% to 85% of college-age women tested; and whether, as in Dr. Horner's study, the women in the sample did so significantly more often than the men.[21]

The results are rather startling. The women showed anxiety about success three to four times as frequently as the men. In other words, approximately one-third of the women who responded to the cues showed such success anxiety as compared with less than one-tenth of the men.[22] This significant relation was not affected by the number of years out of Law School, nor by the kind of success cue (whether partner or Deputy Solicitor General), nor by nature of occupation. There seemed to be no significant relation between the women who showed anxiety about success, and the fields of law in which they were practicing.[23]

Dr. Horner's study of University of Michigan undergraduates uncovered some rather bizarre results—even markedly sadomasochistic feelings toward successful females on the part of some of the women in her study. The responses from Harvard Law School women were more reserved, possibly because the subjects had more time to reflect about their responses.

Female responses exhibiting anxiety (often unconscious) about success, typically attributed a loss of femininity and personal and family difficulties to Barbara, the successful woman lawyer, whether she was Deputy Solicitor General and president of the *Law Review* or partner in a large New York law firm. "Being president of *Law Review* isn't so great—they're usually prigs. She's probably blonde and frigid," was one response. It is fairly clear that it was flippant and possibly even meant to be funny. It is significant, however, that the respondent chose to be flippant in a way that focussed on particular negative attributes and consequences. Another female response spoke in terms of the successful woman's "family (husband et al) and friends" as "tools to be used in the advancement of her career." One way to make the succes less threatening is to deny effort or intellectual responsibility for its attainment. Anxiety about success, therefore, also manifests itself as a tendency to undercut the success of a woman lawyer by describing it as the result of luck, family connections, or other reasons unrelated to ability; or by denying that she was really successful at all:

. . . better than most men in her field, always second and probably feels successful. A "token" to women's rights who will probably be expected to do an enormous amount of work out of gratitude.

Note that Barbara may be better than most men in her field; but that is not why she succeeded. She succeeded only as a result of "tokenism." The subject cannot, in fact, fully accept that Barbara is really successful at all and therefore rates her as "second." The respondent goes on to mention the enormous amount of work Barbara will be expected to do out of gratitude—as a kind of punishment or price for succeeding.

The result of anxiety about success, particularly in able, highly educated women otherwise likely to be very high in achievement motivation, is conflict. They desire to succeed, but at the same time fear that success will deny or destroy their identities as women. One woman encapsulated such a conflict in her response to Barbara as a partner in a large N.Y. law firm: "Perhaps wistfully, (I) wish I were her—but only momentarily—how dull." This kind of conflict and anxiety are undoubtedly complexly bound up in an individual woman's core identity and her sense of her role as a female.

Dr. Horner feels that fear of success is a learned motive, probably deriving from very early childhood when little girls are made to understand that they are not expected to be as aggressive or competitive as boys, and that the proper way for a girl to act is to let the boys win. Much more research will have to be done before such speculations can be substantiated. What we do know now is that such a fear of success motive operates and interrelates in complicated ways with the many motives that determine the level of accomplishment in achievement-oriented activities, and women tend to be adversely affected by them significantly more often than men.

In addition to the findings about success-anxiety, the descriptions of the hypothetical lawyers, George and Barbara, also show some of the ways respondents see themselves and react to lawyers of the opposite sex.

On the whole, both men and women had more to say about Barbara. Whether as partner or as Deputy Solicitor General, she was most often to be described in positive terms. This may be explained in part by the surprise with which her success was greeted. George was also described positively but significantly less often than Barbara.

The tendency to describe Barbara in favorable terms remained fairly constant when controlled for the number of years the subjects had been out of Law School, although she received slightly more mixed responses from the more recent graduates and far more positive responses from those who graduated between 1960 and 1964.

The picture for George is all down hill. The more recent classes much more often described him in mixed or negative terms, and less frequently in neutral terms. The difference may be explained by a generally less favorable attitude on the part of recent classes toward the traditional modes of success embodied in the cues. But it is odd that the pattern does not hold true with regard to a woman succeeding in the same ways. Perhaps the fact that a woman succeeds in the legal profession at all is revolutionary enough to satisfy recent classes who, according to popular wisdom, are supposed to be more skeptical of traditional roles and methods.

Barbara was, more often than George, described as unusual, aggressive, and hard-working and much more aggressive as a partner than as Deputy Solicitor General. Both Barbara and George were described more often as attractive than unattractive, but those responding seemed to be more concerned with Barbara's personal appearance than with George's. He was more often described as cold and calculating and one who manipulates people. This "machiavellian" quality was also attributed to Barbara but less than half as frequently. George was much more often described as dull—almost six times as often as Barbara. He was also described as a "WASP" twice as often. With regard to intelligence, there did not seem to be much difference between Barbara and George. The Deputy Solicitor General, whether as a man or a woman, was described more often as intelligent and socially conscious than the partner. In contrast, the partner was described more often as personally attractive and aggressive.

The response pattern of the women tended to be different from that of the men. For example, they diminished the success of both George and Barbara by saying that it was the result of luck, family connections or some other factor not related to ability. They also ascribed to both George and Barbara the qualities of attractiveness, dullness, and perseverance and described the successful lawyers as "unusual" or as "grinds." When given the option of agreeing or disagreeing, with no neutral response available, the women were more likely to qualify the statement. Possibly this response pattern indicates that the women were more interested in and had more intense feelings about that section of the questionnaire. It may also be that women

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have learned to look at and talk about the legal profession differently from men.

CONCLUSION

Probably the most heartening statistic of all is that 27% of the men and 50% of the women took the trouble to explain why they refused to answer some of the questions, which, they stated, tended to elicit stereotypes. On the whole, the men were more vehement in their denial of prejudice against women attorneys; in fact, they said they opposed it. Some of them roundly criticized the narrow, naive, prejudiced little mind, which authored such questions. Ironically, the questions and statements about women lawyers, appearing in the last section of the questionnaire, had their origins in statements made to women law students by interviewers who came to Harvard Law School. In general, these interviewers have graduated from the very classes from which the sample of this study was drawn.

It is a very good sign that so many of the lawyers, particularly the men, were so militantly opposed to prejudice against women lawyers. Women should be able to look forward to a time when the men, having stated their beliefs, will both persuade others and put their beliefs into practice.

* * * * *

FOOTNOTES

[1] The women represent approximately 3% of the total of 7,926 LL.B. (J.D.) graduates of the Harvard Law School during these seventeen years.

[2] Overall women at the Law School tend to graduate around the upper middle of their classes. Relatively few (fewer than one might predict from their LSAT scores), are at the top of their classes. The relatively low percentage on *Law Review*, Board of Student Advisers and Legal Aid reflects this fact. One possible explanation lies in the internal conflict about competition and success which Dr. Matina Horner discovered in her research on women's achievement motivation (See *Psychology Today*, Nov., 1969, "Why Women Fail."). The intensely competitive atmosphere of HLS, inhabited mostly by men, is the paradigm situation for eliciting the "fear of success motive" which Dr. Horner found tends to make women perform less well both than their male counterparts and than the women themselves would perform outside of such competitive situations. Some of the ramifications of this conflict are discussed further in this article.

[3] The data collected actually covers a broad range of information about the classes graduating from 1953 through 1969, beyond the differences between the men and women graduates upon which this article focuses. A copy of the data cards, program and computer print-out are on file at the Law School and available through the Dean's Office for further use.

[4] The fact that out of the 20 married women who indicated that they are not working, 18 also indicated that they had children, and one indicated that her first child was due to be born this summer.

[5] A subject was considered "employed" if he or she was in some gainful position even remotely connected with the law. This definition excluded, for example, the women who are housewives, and one male graduate who is a professional dancer.

[6] This proposal is meant neither to denigrate nor to deny that many women *prefer* to raise their own children. It is meant to suggest an alternative for those women who are forced to give up the practice of law in order to raise children.

[7] One percent of the men in the sample were employed part-time.

[8] This argument, of course, assumes that there is legal work of a nature that lends itself to part-time work. And there is no real indication of a shortage. The practical reality is that many full-time practicing attorneys devote part of their time to a number of different clients or problems. There is no reason why a lawyer could not spend a smaller fraction of his or her time at the office. But the real difficulty is that most law firms and businesses refuse even to entertain the theoretical possibility of such an arrangement, much less to give it a try. Were such arrangements available it is quite possible that men would also choose a more varied, mixed-discipline, life style.

[9] The percentages will add up to more than 100% because each lawyer was directed to indicate the four fields to which he or she devotes most of his or her time.

[10] The present study of women graduates of the Harvard Law School derived a great deal of its inspiration and some of its hypotheses from Professor White's article, "Women in the Law"; 65 Mich. L.R. 1051.

[11] Interestingly enough, such a rationalization would not pass muster as a justification for sex discrimination in hiring under Title VII of the Civil Rights Act of 1964.

[12] Such a difference might in part be explained by the fact that some women lawyers do not choose to deal with clients. One would expect, however, a more equal proportion of men and women would share this taste for the "quiet life."

[13] White, *supra*.

[14] This assumes, of course, that there are capable women who would want to practice in higher paying fields. Almost one quarter of the women who responded to the questionnaire indicated that remuneration was one of the most important reasons for taking their present employment.

[15] The size of the sample necessitated grouping classes together in order to have significant numbers in all categories.

[16] The results of the survey show that this latter proposition is absurd. To assume that there is some special migratory tendency in the husbands of women lawyers is completely unsubstantiated by factual proof. In fact, the most significant characteristic of the husbands of women lawyers is that they are themselves lawyers (63% of the present sample). In six out of ten cases, to assume that a woman lawyer is likely to leave her job because her husband will move, is also to assume that a male lawyer is as likely to change jobs. The other 4 out of 10 husbands would have to be very restless and rootless (and there is no proof to that effect) to make any significant difference between men and women lawyers who leave employment because they have moved out of town.

[17] Many of the married women with working husbands did not have to approach employment as a money making proposition.

[18] Such a conflict, of course, may also affect men lawyers and law students, particularly in this age of reassessing priorities and modes of living. Perhaps the women, in their concentration on intellectual stimulation and social usefulness merely ride the first wave of a less aggressive, competitive and materialistic future. It is interesting to note that the more recent classes seem to reflect a markedly different attitude toward what is important in life. They tend to exhibit a greater social consciousness, less materialism (at times, in fact, anti-materialism) and generally less satisfaction with themselves and their society than their older counterparts do.

[19] The latter cue was developed by Dr. Matina Horner as a test for achievement motivation and the motive to avoid success. (See, "Why Women Fail," *Psychology Today*, Nov. 1969. See also *Feminine Personality and Conflict*, co-authors, Drs. Horner, Bardwick, Douran and Futmann, to be published by Books/Cole Publishers, Inc., Belmont, Calif., in the summer, 1970.)

[20] The cues for half of the men and half of the women in each class were:

IV. 1. If you were to receive an announcement that George Andrews has become a partner in a large New York law firm, how would you describe him?

IV. 2. If Barbara Robbins, formerly president of the Harvard *Law Review*, had just been appointed Deputy Solicitor General, how would you describe her?

For the other half they were:

IV. 1–A. If George Andrews, formerly president of the Harvard *Law Review*, had just been appointed Deputy Solicitor General, how would you describe him?

IV. 1–A. If you were to receive an announcement that Barbara Robbins has become a partner in a large N.Y. law firm, how would you describe her?

We used two forms of these questions in order to control for any possible difference in the cues which might distort our results. On the whole, the type of cue (whether partner or Deputy Solicitor General) had little effect on the subjects' responses, except in the ways discussed in the text below. The cues were selected because they represent two types of traditional success situations in the legal profession.

[21] Such expectancy of negative consequences from success is one of several criteria for scoring the motive to avoid success in a standard TAT. Such a motive operates as unconscious anxiety which inhibits all other motives. Dr. Horner's research indicated that incidence of the motive to avoid success predicts performance decrements in competitive situations in over 75% of the women in which it occurs.

In this survey, the lower incidence of success anxiety among the women lawyers may be explained by several factors. Only about 60% of the women returning questionnaires responded to the cues. Since, in Dr. Horner's study, denial and avoidance are characteristic of anxiety about success, one can speculate that a number of those not responding would also show fear of success imagery under proper testing conditions. Moreover, the women attorneys might also have developed ways to handle the success anxiety, or their life situations might not arouse it, i.e., where the important men in their lives approve and encourage them in their endeavors.

[22] Five percent of the men in the sample, who showed anxiety about success, tended to congregate in those fields such as family law, probate and trusts and estates, in which women are more readily accepted. It is possible that these fields are less competitive and therefore more comfortable for men who are subject to internal conflicts about success. But the women showing anxiety did not fall into this pattern. Rather, they seem to be scattered out across a much wider variety of fields, including the more competitive ones such as litigation and corporate work.

[23] The men exhibiting anxiety about negative consequences from success also tended to focus on personal or family problems as bound up with being successful. They described George as "burned out," or with "disoriented priorities with respect to family and community." Typical male responses showing anxiety about success concentrated on the high cost of success in terms of time and emotional strain: "He has worked long hours for seven or eight years, seeing little of his family, and may be divorced because of the great strain from his work."

SUMMARY OF STATE LABOR LAWS FOR WOMEN [1]

During a century of development, the field of labor legislation for women has seen a tremendous increase in the number of laws and a notable improvement in the standards established. Today the 50 States, the District of Columbia, and Puerto Rico have laws relating to the employment of women. The principal subjects of regulation are: (1) minimum wage; (2) overtime compensation; (3) hours of work, including maximum daily and

Footnotes at end of article.

weekly hours, day of rest, meal and rest periods, and nightwork; (4) equal pay; (5) fair employment practices; (6) industrial homework; (7) employment before and after childbirth; (8) occupational limitations; and (9) other standards, such as seating provisions and weightlifting limitations.

Although legislation in one or more of these fields has been enacted in all of the States, the District of Columbia, and Puerto Rico, the standards established vary widely. In some jurisdictions different standards apply to different occupations or industries. Laws relating to minors are mentioned here only if they apply also to women.

MINIMUM WAGE

A total of 36 States, the District of Columbia, and Puerto Rico have minimum wage laws with minimum rates currently in effect. These laws apply to men as well as women in 29 States, the District of Columbia, and Puerto Rico. In 7 States minimum wage laws apply only to women or to women and minors. An additional 3 States have minimum wage laws, applicable to females and/or minors, which are not in operation.

In general minimum wage laws are applicable to all industries and occupations except domestic service and agriculture, which are specifically exempt in most States. The laws of 9 States—Arkansas, California, Colorado, Michigan, New Jersey, North Dakota, Utah, Washington, and Wisconsin—either set statutory minimum wage rates or permit a wage board to set minimum rates for both domestic service and agricultural workers. In Wisconsin wage orders cover both groups. The Michigan statutory rate applies to agricultural employees (except certain employees engaged in harvesting on a piecework basis) and domestic service workers, but is limited to employers of 4 or more. The Arkansas law is limited to employers of 5 or more and applies to agricultural workers, with some exceptions, whose employer used more than 500 man-days of agricultural labor in any 4 months of the preceding year. The New Jersey statutory rate applies to agricultural workers and excludes domestic service workers, but the law permits them to be covered by a wage order. California has a wage order applicable to agricultural workers, but has none for domestic service workers. The remaining 4 States—Colorado, North Dakota, Utah, and Washington—have no wage orders that apply to domestic service or agricultural workers.

Seven jurisdictions—the District of Columbia, Hawaii, Massachusetts, New Mexico, Oregon, Puerto Rico, and West Virginia—cover either domestic service or agricultural workers, but not both. West Virginia does not exclude domestic service workers as a group, but coverage is limited to employers of 6 or more. Some or all agricultural workers are covered under the minimum wage law or orders in the District of Columbia, Hawaii, Massachusetts, New Mexico, Oregon, and Puerto Rico.

Since the Federal Fair Labor Standards Act (FLSA) of 1938, as amended, establishes a minimum hourly rate for both men and women engaged in or producing goods for interstate commerce and for employees of most large retail firms and other specified establishments, as well as some workers in agriculture, State minimum wage legislation applies chiefly to workers in local trade and service industries.

HISTORICAL RECORD

The history of minimum wage legislation began in 1912 with the enactment of a law in Massachusetts. At that time minimum wage legislation was designed for the protection of women and minors, and did much to raise their extremely low wages in manufacturing (now covered by the FLSA) and trade and service industries. Between 1912 and 1923 laws were enacted in 15 States,[2] the District of Columbia, and Puerto Rico.

Legislative progress was interrupted by the 1923 decision of the U.S. Supreme Court declaring the District of Columbia law unconstitutional, and no new minimum wage laws were passed during the next 10 years.

The depression years of the 1930's brought a revival of interest in minimum wage legislation, and 13 additional States and Alaska enacted laws.

In 1937 the U.S. Supreme Court upheld the constitutionality of the minimum wage law in the State of Washington, expressly reversing its prior decision on the District of Columbia law.

In 1941 Hawaii enacted a minimum wage law, bringing to 30 the number of jurisdictions with such legislation.

From 1941 through 1954 no State enacted a minimum wage law. However, there was a considerable amount of legislative activity in the States with minimum wage legislation on their statute books. In some States the laws were amended to extend coverage to men; in others, to establish or increase a statutory rate; and in still others, to strengthen the procedural provisions.

In the period 1955–66:

10 States—Delaware, Idaho, Indiana, Maryland, Michigan, New Mexico, North Carolina, Vermont, West Virginia, and Wyoming—enacted minimum wage laws for the first time, making a total of 40 jurisdictions with such laws.

7 States—Maine, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, and Washington—and the District of Columbia, with wage board laws enacted statutory rate laws, retaining, with the exception of Maine and Oklahoma, the wage board provision. The enactments in 5 States—Maine, New Jersey, Oklahoma, Pennsylvania, and Washington—and the District of Columbia also extended coverage to men.

4 States—Kentucky, Nevada, North Dakota, and South Dakota—amended their laws to extend coverage to men.

16 States—Alaska, Connecticut, Hawaii, Idaho, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, New York, North Carolina, Rhode Island, South Dakota, Vermont, Washington, and Wyoming—amended their laws one or more times to increase the statutory rates.

2 States—Massachusetts and New Jersey—and the District of Columbia amended their premium pay requirements. Massachusetts amended its minimum wage law to require the payment of not less than 1½ times an employee's regular rate for hours worked in excess of 40 a week, exempting a number of occupations and industries from the overtime provision. In New Jersey and the District of Columbia new statutory rate laws were enacted which included overtime pay requirements covering most workers.

Other amendments in a number of States affected coverage of the minimum wage laws, clarified specific provisions, or otherwise strengthened the laws.

In 1967:

1 State—Nebraska—enacted a minimum wage law for the first time, bringing to 41 the total number of jurisdictions having such laws. This law establishes a statutory rate applicable to men, women, and minors, and is limited to employers of 4 or more.

1 State—Oregon—with a wage board law applicable to women and minors, enacted a statutory rate law applicable to men and women 18 years and over.

1 State—New Hampshire—made its wage board provisions applicable to men.

1 State—Maryland—extended coverage by eliminating the exemption for employers of less than 7.

12 States—Connecticut, Delaware, Idaho, Indiana, Maine, Maryland, New Hampshire, New Mexico, Rhode Island, Vermont, Washington, and Wyoming—amended their laws to increase their statutory rates.

2 States—California and Wisconsin—with wage board laws, revised wage orders, setting a single rate for all occupations and industries.

2 States—New Mexico and Massachusetts—extended coverage to some or all agricultural workers.

1 State—Michigan—amended its minimum wage regulations to decrease allowable deductions and strengthen enforcement.

In 1968:

1 State—Arkansas—with a statutory rate law applicable to females, enacted a new law establishing a statutory rate applicable to men, women, and minors, effective January 1, 1969.

1 State—Delaware—amended its law to set a minimum rate for employees receiving gratuities.

1 State—Pennsylvania—amended its law to increase the statutory rate and to require overtime pay.

ROSTER OF MINIMUM WAGE JURISDICTIONS

The 41 jurisdictions with minimum wage legislation are:

Alaska	Nevada
Arizona	New Hampshire
Arkansas	New Jersey
California	New Mexico
Colorado	New York
Connecticut	North Carolina
Delaware	North Dakota
District of Columbia	Ohio
Hawaii	Oklahoma
Idaho	Oregon
Illinois [3]	Pennsylvania
Indiana	Puerto Rico
Kansas [3]	Rhode Island
Kentucky	South Dakota
Louisiana [3]	Utah
Maine	Vermont
Maryland	Washington
Massachusetts	West Virginia
Michigan	Wisconsin
Minnesota	Wyoming
Nebraska	

Eight States, the District of Columbia, and Puerto Rico have laws that set a statutory rate and also provide for the establishment of occupation or industry rates based on recommendations of wage boards. Nineteen States have statutory rate laws only; that is, the rate is set by the legislature. Twelve States (including 3 with no minimum wage rates currently in effect) have laws that set no fixed rate but provide for minimum rates to be established on an occupation or industry basis by wage board action.

The following list shows, for the 41 jurisdictions, the type of law and employee covered:

1. Statutory rate and wage board law for:

Men, women, and minors

Connecticut	New York
District of Columbia	Pennsylvania
Massachusetts	Puerto Rico
New Hampshire	Rhode Island
New Jersey [4]	Washington [4]

2. Statutory rate law only for: *Men, women, and minors*

Alaska	Nevada
Arkansas (eff. 1/1/69)	New Mexico
Delaware	North Carolina
Hawaii	(16 to 65 years)
Idaho	South Dakota
Maine	(14 years and over)
Maryland	Vermont
Nebraska	West Virginia

Men and women

Indiana (18 years and over).
Michigan (18 to 65 years).
Oklahoma (18 to 65 years).
Oregon (18 years and over).
Wyoming (18 years and over).

3. Wage board law only for: *Men, women, and minors.*

Footnotes at end of article.

Kentucky and North Dakota.

Women and minors:

Arizona	Ohio
California	Utah
Colorado	Wisconsin
Illinois [5]	*Females.*
Kansas [5]	Louisiana [5]
Minnesota	

OVERTIME COMPENSATION

Sixteen States, the District of Columbia, and Puerto Rico have laws or regulations, usually part of the minimum wage program, that provide for overtime compensation. These generally require the payment of premium rates for hours worked in excess of a daily and/or weekly standard. Premium pay requirements are both a deterrent to excessive hours of work and an impetus to the equitable distribution of work.

Statutory requirements

Statutes of 10 States and the District of Columbia require the payment of 1½ times the regular rate of pay after a specified number of daily and/or weekly hours. Generally these statutes are applicable to men, women, and minors. The following list of jurisdictions with statutory overtime rates show the hours after which premium pay is required:

	Daily standard	Weekly standard
Alaska	8	40
Connecticut (July 1, 1969)		42; 40
District of Columbia		40
Hawaii		40
Idaho [6]	8	48
Maine		48
Massachusetts		40
New Jersey		40
Pennsylvania (Feb. 1, 1969)		42; 40
Vermont		48
West Virginia		48

Wage order requirements

Wage orders as part of the minimum wage program in 6 States and Puerto Rico require the payment of premium rates for overtime. Generally the orders provide for payment of 1½ times, or double, either the minimum rate or the regular rate of pay for hours in excess of a daily and/or weekly standard. The following list of jurisdictions with wage orders that require overtime rates (for men, women, and minors unless otherwise indicated) shows the premium rate established and the hours after which the premium is payable. Most of the jurisdictions have issued a number of wage orders with varying standards for different occupations. The one shown is the highest standard of general application.

Rate		Daily Standard	Weekly Standard
California [7]	1½ times the regular rate.	8	40
	Double the regular rate.	12; 8 on 7th day.	
Colorado [7]	1½ times the regular rate.	8	40
Kentucky [8]	1½ times the minimum rate.		44
New York	1½ times basic minimum rate.		40
Oregon [7]	1½ times the minimum rate.	8	40
Rhode Island	do		45
Puerto Rico	Double the regular rate.	8	44

HOURS OF WORK

The first enforceable law regulating the hours of employment of women became effective in Massachusetts in 1879. Today 46 States, the District of Columbia, and Puerto Rico have established standards governing at least one aspect of women's hours of employment; that is, maximum daily or weekly hours, day of rest, meal and rest periods, and nightwork. Some of these standards have been established by statute; others, by minimum wage or industrial welfare order.

Maximum daily and weekly hours

Forty-one States and the District of Columbia regulate the number of daily and/or weekly hours of employment for women in one or more industries. These limitations have been established either by statute or by order. Nine States—Alabama, Alaska, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, and West Virginia—and Puerto Rico do not have such laws; however, laws or wage orders in 5 of these jurisdictions—Alaska, Hawaii, Idaho, Puerto Rico, and West Virginia—require the payment of premium rates for time worked over specified hours.

Hours standards for 3 of the 41 States—Georgia, Montana, and South Carolina—are applicable to both men and women. In addition there are 3 States—New Mexico, North Carolina, and Washington—which cover men and women in some industries and women only in others.

The standard setting the fewest maximum hours which may be worked, in one or more industries, is shown for each of the 41 States and the District of Columbia.

	Maximum hours	
	Daily	Weekly
Arizona	8	48
Arkansas	8	(9)
California	8	48
Colorado	8	
Connecticut	8	48
District of Columbia	8	48
Georgia	10	60
Illinois	8	48
Kansas [10]	8	48
Kentucky	10	60
Louisiana	8	48
Maine	9	50
Maryland	10	60
Massachusetts	9	48
Michigan	9	54
Minnesota		
Mississippi	10	60
Missouri	9	54
Montana	8	48
Nebraska	9	54
Nevada	8	48
New Hampshire	10	48
New Jersey	10	54
New Mexico	8	48
New York	8	48
North Carolina	9	48
North Dakota	8½	48
Ohio	8	48
Oklahoma	9	54
Oregon [11]	8	40
Pennsylvania	10	48
Rhode Island	9	48
South Carolina	8	40
South Dakota	10	54
Tennessee	10	50
Texas	9	54
Utah	8	48
Vermont	9	50
Virginia	9	48
Washington	8	48
Wisconsin	9	50
Wyoming [12]	8	48

A brief summary of the above table shows that in one or more industries:

Two States have a maximum of 8 hours a day, 40 hours a week.

Twenty-three States and the District of Columbia have set maximum hours of 8 a day, 48 a week, or both.

Eight States have a maximum 9-hour day, 50- or 54-hour week. (This includes Michigan with an average 9-hour, maximum 10-hour, day.)

Minnesota has no daily hours limitation in its statute, but limits weekly hours to 54.

Seven States have a maximum 10 hour day, 50- to 60-hour week.

However, many of these laws contain exemptions or exceptions from their limitations. For example:

Work is permitted in excess of the maximum hours limitations for at least some employees in 16 States if they receive overtime compensation: Arizona, Arkansas, California, Colorado, Kansas, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Virginia, Wisconsin, and Wyoming.

Four States (North Carolina, Oregon, South Carolina, Virginia) exempt workers who are paid in accordance with the overtime requirements of, or who are subject to, the Fair Labor Standards Act, the Federal minimum wage and hour law of most general application. Arizona exempts employers operating in compliance with the Fair Labor Standards Act, provided 1½ times the regular rate is paid for hours over 8 a day. California permits airline and railroad personnel and women protected by the Fair Labor Standards Act, with some industry exceptions, to work up to 10 hours a day and 58 hours a week if they are paid 1½ times their regular rate for hours over 8 a day and 40 a week. Kansas exempts most firms meeting the wage, overtime, and recordkeeping requirements of the Fair Labor Standards Act or comparable standards set by collective bargaining agreements. New Mexico exempts employees in interstate commerce whose hours are regulated by acts of Congress.

One State, Maryland, exempts employment subject to a bona fide collective bargaining agreement.

State agencies in Arkansas, Kansas, Massachusetts, Michigan, Minnesota, Oregon, Pennsylvania, and Wisconsin have broad authority to permit work in excess of the maximum hours limitations on a case-by-case basis; to vary hours restrictions by industry or occupation; or to regulate hours by requiring premium pay for overtime. Premium pay for overtime work is required by law or order regulating hours in Arkansas, Kansas, Oregon, and Wisconsin (page 9), and the minimum wage laws or orders of Massachusetts, Oregon, and Pennsylvania require premium pay for overtime work (page 7). Twenty-eight more States have specific exceptions to the hours restrictions for emergencies, seasonal peaks, national defense, and other reasons.

Some or all women employed in executive, administrative, and professional positions are exempt from hours laws limitations in 26 States and the District of Columbia.

Since 1963, 16 States (Arizona, California, Colorado, Illinois, Kansas, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Virginia, Washington) and the District of Columbia modified their maximum hours laws or orders one or more times to permit work beyond the limits established by the maximum hours laws under regulated conditions, to exempt additional groups of workers from hours restrictions, or to establish administrative procedures for varying hours limitations. One State, Delaware, eliminated hours restrictions altogether.

In Michigan the State Occupational Safety Standards Commission has promulgated a standard which removes the limitations on women's daily and weekly hours of work, effective February 15, 1969, subject to modification by the State legislature.

Day of Rest

Twenty States, the District of Columbia, and Puerto Rico have established a 6-day maximum workweek for women employed in some or all industries. In 8 of these jurisdictions—California, Connecticut, Illinois, Massachusetts, New Hampshire, New York, Puerto Rico, and Wisconsin—this standard is applicable to both men and women. Jurisdictions that provide for a 6-day maximum workweek are:

Arizona, Arkansas, California, Connecticut, District of Columbia, Illinois, Kansas, Louisiana.

Massachusetts, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio.

Oregon, Pennsylvania, Puerto Rico, Utah, Washington, Wisconsin.

Of the remaining 30 States, 20 have laws that prohibit specified employment or activities on Sunday:

Alabama, Florida, Georgia, Idaho, Indiana, Kentucky, Maine.

Maryland, Mississippi, Missouri, New Mexico, Oklahoma, Rhode Island, South Carolina.

South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia.

Meal Period

Twenty-three States, the District of Columbia, and Puerto Rico provide that meal periods, varying from 20 minutes to 1 hour in duration, must be allowed women employed in some or all industries. In 3 States—Indiana, Nebraska, and New York—these provisions apply to men as well as women. Jurisdictions that provide for the length of the meal period by statute, order, or regulation are:

Arkansas, California, Colorado, District of Columbia, Indiana, Kansas, Louisiana, Maine, Maryland.

Massachusetts, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon.

Pennsylvania, Puerto Rico, Rhode Island, Utah, Washington, West Virginia, Wisconsin.

Combining rest period and meal period provisions, Kentucky requires, before and after the regularly scheduled lunch period (duration not specified), rest periods to be granted to females, and Wyoming requires two paid rest periods, one before and one after the lunch hour, to be granted to females employed in specified establishments who are required to be on their feet continuously.

Rest period

Twelve States and Puerto Rico provide by statute or wage order for rest periods (as distinct from meal periods) for women workers. The statutes in 4 of these States—Alaska, Kentucky, Nevada, and Wyoming—cover a variety of industries (in Alaska and Wyoming applicable only to women standing continuously); laws in New York and Pennsylvania apply to elevator operators not provided with seating facilities. Rest periods in one or more industries are required by wage orders in Arizona, California, Colorado, Oregon, Utah, Washington, and Puerto Rico. Most of the provisions are for a 10-minute rest period within each half day of work. The North Dakota Manufacturing Occupation Order prohibits the employment of women for more than 2 hours without a rest period (duration not specified).

Arkansas manufacturing establishments operating on a 24-hour schedule may be exempt, when necessary, from the meal period provision if females are granted two 10-minute paid rest periods and provision is made for them to eat at their work.

Nightwork

In 18 States and Puerto Rico nightwork for adult women is prohibited and/or regulated in certain industries or occupations.

Nine States and Puerto Rico prohibit nightwork for adult women in certain occupations or industries or under specified conditions:

Connecticut, Kansas, Massachusetts, Nebraska, New Jersey, New York, North Dakota, Ohio, Puerto Rico, Washington.

In North Dakota and Washington the prohibition applies only to elevator operators; in Ohio, only to taxicab drivers.

In 9 other States, as well as in several of the jurisdictions that prohibit nightwork in specified industries or occupations, the employment of adult women at night is regulated either by maximum hour provisions or by specified standards of working conditions. For example, in one State women and minors are limited to 8 hours a night.

California, Illinois, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, Utah, Wisconsin.

Arizona and the District of Columbia prohibit the employment of females under 21 years of age in night messenger service; the Arizona law also is applicable to males under 21.

EQUAL PAY

Thirty-one States have equal pay laws applicable to private employment that prohibit discrimination in rate of pay based on sex. They establish the principle of payment of a wage rate based on the job and not on the sex of the worker. Five States with no equal pay law have fair employment practices laws and the District of Columbia, an ordinance, that prohibit discrimination in rate of pay or compensation based on sex.

Historical record

Public attention was first sharply focused on equal pay for women during World War I when large numbers of women were employed in war industries on the same jobs as men, and the National War Labor Board enforced the policy of "no wage discrimination against women on the grounds of sex." In 1919, 2 States—Michigan and Montana—enacted equal pay legislation. For nearly 25 years these were the only States with such laws.

Great progress in the equal pay field was made during World War II when again large numbers of women entered the labor force, many of them in jobs previously held by men. Government agencies, employers, unions, organizations, and the general public were concerned with the removal of wage differentials as a means of furthering the war effort.

During the period 1943–45 equal pay laws were enacted in 4 States—Illinois, Massachusetts, New York, and Washington.

In the next 4 years 6 States—California, Connecticut, Maine, New Hampshire, Pennsylvania, and Rhode Island—and Alaska passed equal pay laws.

New Jersey enacted an equal pay law in 1952. Arkansas, Colorado, and Oregon passed such legislation in 1955.

In 1957 California amended its equal pay law to strengthen existing legislation, and Nebraska adopted a resolution endorsing the policy of equal pay for equal work without discrimination based on sex and urging the adoption of this policy by all employers in the State. Hawaii, Ohio, and Wyoming passed equal pay laws in 1959.

In 1961 Wisconsin amended its fair employment practices act to prohibit discrimination because of sex and to provide that a differential in pay between employees, when based in good faith on any factor other than sex, is not prohibited.

In 1962 Arizona passed an equal pay law, and Michigan amended its law (which previously covered only manufacture or production of any article) to extend coverage to any employer of labor employing both males and females.

During 1963 Missouri enacted an equal pay law, and Vermont passed a fair employment practices law which also prohibits discrimination in rates of pay by reason of sex.

Also in 1963 the Federal Equal Pay Act was passed as an amendment to the FLSA.

In 1965, 3 States—North Dakota, Oklahoma, and West Virginia—enacted equal pay laws, and 3 States with no equal pay law—Maryland, Nebraska, and Utah—passed fair employment practices laws which prohibit discrimination in compensation based on sex. Amendments in California, Maine, New York, and Rhode Island strengthened existing equal pay laws.

In 1966, 4 States—Georgia, Kentucky, Maryland, and South Dakota—enacted equal pay laws. Massachusetts enacted a law that provides equal pay for certain civil service employees.

In 1967, 2 States—Indiana and Nebraska—enacted equal pay law.

ROSTER OF EQUAL PAY STATES [13]

The 31 States with equal pay laws are:

Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana,[14] Kentucky.

Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota.

Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Washington, West Virginia, Wyoming.

Equal pay laws in Colorado, Georgia, Indiana, Kentucky, Maryland, Montana, Nebraska, North Dakota, and Pennsylvania are applicable to public as well as private employment. (A Massachusetts law contains an elective equal pay provision, applicable to employees of cities or towns who are in the classified civil service; and a Texas law requires equal pay for women in public employment.) In 21 States the laws apply to most types of private employment; in general those specifying exemptions exclude agricultural labor and domestic service. The Illinois law applies only to manufacturing.

FAIR EMPLOYMENT PRACTICES

Title VII of the Federal Civil Rights Act of 1964 prohibits discrimination in private employment based on sex, in addition to race, color, religion, and national origin. Title VII covers private employment and labor organizations engaged in industries affecting commerce, as well as employment agencies, and applies to such employers and unions with at least 25 employees or members.

Thirty-seven States, the District of Columbia, and Puerto Rico have fair employment practices laws, but only 15 of the States and the District of Columbia include a prohibition against discrimination in employment based on sex. Prior to the enactment of title VII, the laws of only 2 States, Hawaii and Wisconsin, prohibited sex discrimination in employment.

The 37 States with fair employment practices laws are:

Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois.

Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota.

Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio.

Oklahoma,[15] Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

The 16 jurisdictions whose fair employment practices laws prohibit discrimination in employment based on sex are:

Arizona, Connecticut, District of Columbia, Hawaii, Idaho.

Maryland, Massachusetts, Michigan, Missouri, Nebraska.

Nevada, New York, Oklahoma,[15] Utah Wisconsin, Wyoming.

In 2 additional States—Alaska and Vermont—the fair employment practice law prohibits discrimination based on sex, in wages only. In a third State—Colorado—the law only prohibits discrimination based on sex in apprenticeship, on-the-job training, or other occupational instruction, training, or retraining programs.

OTHER LABOR LEGISLATION

Industrial homework

Nineteen States and Puerto Rico have industrial homework laws or regulations:

California, Connecticut, Hawaii, Illinois, Indiana, Maryland, Massachusetts.

Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania.

Puerto Rico, Rhode Island, Tennessee, Texas, West Virginia, Wisconsin.

These regulations apply to all persons, except that in Oregon the provisions apply to women and minors only.

Footnotes at end of article.

In addition, the Alaska and Washington minimum wage and hour laws authorize the issuance of rules and regulations restricting or prohibiting industrial homework where necessary to safeguard the minimum wage rate prescribed in the laws.

Employment before and after childbirth

Six States and Puerto Rico prohibit the employment of women in one or more industries or occupations immediately before and/or after childbirth. These standards are established by statute or by minimum wage or welfare orders. Women may not be employed in:

Connecticut: 4 weeks before and 4 weeks after childbirth.

Massachusetts: 4 weeks before and 4 weeks after childbirth.

Missouri: 3 weeks before and 3 weeks after childbirth.

New York: 4 weeks after childbirth.

Puerto Rico: 4 weeks before and 4 weeks after childbirth.

Vermont: 2 weeks before and 4 weeks after childbirth.

Washington: 4 months before and 6 weeks after childbirth.

In addition to the prohibition of employment, Puerto Rico requires the employer to pay the working mother half her regular wage or salary during an 8-week period and provides for job security during the required absence.

Rhode Island's Temporary Disability Insurance Act provides that women workers covered by the act who are unemployed because of sickness resulting from pregnancy are entitled to cash benefits for maternity leave for a 14-week period beginning with the sixth week prior to the week of expected childbirth, or with the week childbirth occurs if it is more than 6 weeks prior to the expected birth.

The New Jersey Temporary Disability Benefits Act provides that women workers to whom the act applies are entitled to cash payments for disability existing during the 4 weeks before and the 4 weeks after childbirth.

Also, the Oregon Mercantile Order recommends that an employer should not employ a female at any work during the 6 weeks preceding and the 4 weeks following the birth of her child, unless recomended by a licensed medical authority.

Occupational limitations

Twenty-six States have laws or regulations that prohibit the employment of adult women in specified occupations or industries or under certain working conditions that are considered hazardous or injurious to health and safety. In 17 of these States the prohibition applies to women's employment in or about mines. (Clerical or similar work is excepted from the prohibition in about half of these States.) Ten States prohibit women from mixing, selling, or dispensing alcoholic beverages for on-premises consumption, and 1 State—Georgia—prohibits their employment in retail liquor stores. (In addition, a Florida statute authorizes the city of Tampa to prohibit females from soliciting customers to buy alcoholic beverages.)

The following States have occupational limitations applicable to:

Mines

Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana.

Maryland, Missouri, New York, Ohio, Oklahoma, Pennsylvania.

Utah, Virginia, Washington, Wisconsin, Wyoming.

Establishments serving alcoholic beverages

Alaska, California, Connecticut, Illinois,[16] Indiana, Kentucky, Ohio, Pennsylvania, Rhode Island, Wyoming.

Eleven States prohibit the employment of women in other places or occupations, or under certain conditions:

Arizona—In occupations requiring constant standing.

Colorado—Working around coke ovens.

Massachusetts—Working on cores more than 2 cubic feet or 60 pounds.

Michigan—Handling harmful substances; in foundries without approval of the Department of Labor.

Minnesota—Placing cores in or out of ovens; cleaning moving machinery.

Missouri—Cleaning or working between moving machinery.

New York—Coremaking, or in connection with coremaking, in a room in which the oven is also in operation.

Ohio—As crossing watchman, section hand, express driver, metal molder, bellhop, gas or electric meter reader; in shoeshining parlors, bowling alleys as pinsetters, poolrooms; in delivery service on motor-propelled vehicles of over 1-ton capacity; in operating freight or baggage elevators if the doors are not automatically or semiautomatically controlled; in baggage and freight handling; trucking and handling by means of handtrucks, heavy materials of any kind; in blast furnaces and smelters.

Pennsylvania—In dangerous or injurious occupations.

Washington—As a bellhop.

Wisconsin—In dangerous or injurious occupations.

The majority of the States with occupational limitations for adult women also have prohibitory legislation for persons under 21 years. In addition, 10 States have occupational limitations for persons under 21 years only. Most of these limitations apply to the serving of liquor and to the driving of taxicabs, schoolbuses, or public vehicles; others prohibit the employment of females under 21 years in jobs demanding constant standing or as messengers, bellhops, or caddies.

Seating and weightlifting

A number of jurisdictions—through statutes, minimum wage orders, and other regulations—have established employment standards for women relating to plant facilities such as seats, lunchrooms, dressing rooms, restrooms, and toilet rooms and to weightlifting. Only the seating and weightlifting provisions are included in this summary.

Seating.—Forty-five States, the District of Columbia, and Puerto Rico have seating laws or orders; all but one (the Florida law) apply exclusively to women. Delaware, Hawaii, Illinois, Maryland, and Mississippi have no seating laws or orders.

Weightlifting.—Ten States and Puerto Rico have statutes, rules, regulations, and/or orders which specify the maximum weight women employees may lift, carry, or lift and carry. Following are the standards established for weightlifting and carrying in the 11 jurisdictions. Some States have standards varying by occupation or industry and are, therefore, listed more than once.

Any occupation: "excessive weight" in Oregon; 30 pounds lifting and 15 pounds carrying in Utah; 35 percent of body weight, or 25 pounds where repetitive lifting in Alaska; 25 in Ohio; 40 in Massachusetts; 44 in Puerto Rico; 50 in California.

Foundries and core rooms: 25 pounds in Maryland, Massachusetts, Minnesota, and New York.

Specified occupations or industries (by orders): 25 pounds in California; 25 to 50 in Oregon; 35 pounds and "excessive weight" in Washington.

Women's Bureau publications on wages, hours, equal pay, and related subjects may be obtained, at prices quoted, from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402—

State Minimum Wage Laws. Leaflet 4. April 1966. 5¢.

Analysis of Coverage and Wage Rates of State Minimum Wage Laws and Orders. August 1, 1965. Bull. 291. 1965. 40¢.

Fringe Benefit Provisions From State Minimum Wage Laws and Orders. September 1, 1966. Bull 293. 1967. 55¢.

State Hour Laws for Women. Bull. 277. 1961. 35¢.

Equal Pay Facts. Leaflet 2. May 1966. 5¢.

1965 Handbook on Women Workers. Bull. 290. 1966. $1.00.

From the Women's Bureau, Wage and Labor Standards Administration, U.S. Department of Labor, Washington, D.C. 20210—

Labor Laws Affecting Women. (Specify State).

Labor Laws Affecting Private Household Workers. July 15, 1967.

Laws on Sex Discrimination in Employment. April 1, 1967.

What the Equal Pay Principle Means to Women. August 1966.

Weightlifting Provisions for Women by State. July 1966.

Why State Equal Pay Laws? June 1966.

Action for Equal Pay. January 1966.

Getting the Facts on Equal Pay. January 1966.

FOOTNOTES

[1] As of December 1968.

[2] One of these laws was repealed in 1919 (Nebraska); another, in 1921 (Texas).

[3] No minimum rates in effect.

[4] Wage orders applicable to women and minors only.

[5] No minimum rates in effect.

[6] The premium pay requirement is separate from the minimum wage program and is applicable only to women.

[7] Applicable to women and minors only. In California, minors under 18 limited to 8 hours a day, 6 days a week.

[8] Since the issuance of wage orders applicable to women and minors only, statutory coverage of the wage board program has been extended to men.

[9] A 6-day week limitation provides, in effect, for 48-hour workweek.

[10] Maximum hours standards set by Labor Commissioner under minimum wage program.

[11] See footnote 10.

[12] If the 8 hours of work are spread over more than 12 hours in a day, time and a half must be paid for each of the 8 hours worked after the 12-hour period.

[13] Fair employment practices acts in 5 States with no equal pay law—Idaho, Nevada, Utah, Vermont, and Wisconsin—prohibit discrimination in rate of pay or compensation based on sex. In the District of Columbia there is an ordinance prohibiting discrimination based on sex.

[14] Indiana included an equal pay provision in its amendments to the minimum wage law.

[15] Effective May 16, 1969.

[16] Illinois State law empowers city and county governments to prohibit by general ordinance or resolution.

[Legal memorandum: "Age of Majority"]

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., June 8, 1970.

To: Senate Constitutional Amendment Subcommittee.

From: American Law Division.

Subject: The Age of Majority for Men and Women in Eight States.

This will refer to your inquiry of June 5, 1970 with regard to the age of majority for men and women in a selection of eight States. The following is a list of the eight States, the sources used in compilation, that age of majority, and the applicable sections of the State Codes.

(1) *Idaho: General Laws of Idaho Annotated, 1969 Cumulative Pocket Supplement.*

(a) The age of majority is age 21 for males and age 18 for females. (§ 32–101).

(2) *Illinois: Illinois Annotated Statutes, 1970 Cumulative Pocket Part.*

(a) Males 21 and females 18 years of age are of legal age for all purposes, except that it is unlawful to sell, give or deliver alcoholic liquor to any male or female under the age of 21 years (§ 43–131); and except as provided in the Illinois Uniform Gifts to Minors Act. (§ 3–31). For the purpose of the Uniform Act all persons under 21 years of age are minors. (§ 3–531).

(3) *Montana: Revised Codes of Montana, 1969 Cumulative Pocket Part.*

(a) The age of majority is 21 years of age for males and 18 years of age for females. (§§ 13–202; 64–101).

(4) *Nevada: Nevada Revised Statutes.*

(a) All male persons of the age of 21 years and all females of the age of 18 years, who are under no legal disability, shall be capable of entering into any contract. (§ 129.010).

(5) *North Dakota: North Dakota Century Code, 1969 Supplement.*

(a) Males attain their majority at the age of 21 years, and females at the age of 18 years. (§ 14–10–02).

(6) *Oklahoma: Oklahoma Statutes Annotated 1969–1970 Cumulative Pocket Part.*

(a) The age of minority for males is 21 and 18 for females. (§ 15–13).

(7) *South Dakota: South Dakota Compiled Laws, 1970 Pocket Supplement.*

(a) Males become of age, for the purpose of entering contracts, at 21 and females at 18. (§§ 26–1–1; 26–2–1; 26–2–3).

(8) *Utah: Utah Code Annotated 1969 Pocket Supplement.*

(a) The age of majority for males is 21 years and 18 years for females. (§ 15–2–1).

DAVID KEANEY,
American Law Division.

LEGAL MEMORANDUM: WOMEN ON STATE JURIES
THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., June 10, 1970.

To: Senate Constitutional Amendments Subcommittee.

From: American Law Division.

Subject: Women As Jurors On State Juries.

The fifty State survey presented below is submitted in response to your request for a determination as to whether there is any sex discrimination as to qualifications for serving on the juries of the various States, and as to what exemptions or excuses are specifically directed at women. It should be noted that provisions dealing with service depending on separate or adequate facilities for female jurors or with the procedure for claiming any allowed exemption or excuse have not been considered here. With regard to exemptions provided for women who have care of a child, we have included those States which phrase the exemption in terms of a "person" having care of a child. Likewise, although there are male nurses, included here are those States which provide an exemption from jury duty for nurses.

Since the Library of Congress has not yet received many of the laws enacted by the 1970 sessions of those State legislatures which met in 1970, they have not been included in this survey. However, it is possible that some of these States have acted in this area either by changing or adding to any of the provisions mentioned here.

A search of the laws of the fifty States appears to indicate that in all of the jurisdictions there is no distinction between males and females as to the basic qualifications for service on juries. With regard to whether women are permitted to serve on juries, one State, Washington, deserves a special discussion and treatment below. Of the other forty-nine States, twenty-six do not appear to have any distinction between males and females and to qualifications (although some affirmative act may have to be performed by a woman or a determination made by the body listing potential jurors before service may be allowed) and no specific exemptions are directed at females, and the remaining twenty-three States do not appear to have any distinction between males and females as to qualifications but contain specific exemptions or excuses for women or for female-dominated professions or categories.

NO DISTINCTION, NO FEMALE EXEMPTIONS

Alaska—Alaska Stats. §§ 09.20.010, 09.20.030.

Arizona—A.R.S. §§ 21.201, 21–202.

Arkansas—Ark. Stats. § 34–101 et seq. A provision that a woman was not compelled to serve as a juror against her will was repealed in 1969.

California—Code of Civil Proc. § 198 et seq.

Colorado—Col. Rev. Stat. § 78–1–1 et seq.

Delaware—10 Del. C. § 4504 et seq.

Florida—F.S.A. § 40.01 et seq.

Hawaii—Hawaii Rev. Stats. § 609–1 et seq.

Idaho—Idaho Code, § 2–201 et seq.

Illinois—S.H.A. ch. 78, §1 et seq.

Indiana—Burn's Ind. Stat. § 4–7115.

Kentucky—Baldwin's Rev. Stat., §§ 29.025, 29.035.

Maine—14 M.R.S.A. § 1201 et seq.

Maryland—Ann. Code of Md., Art. 51, § 1 et seq.

Michigan—M.C.L.A. §§ 600.1306, 600.1307.

Mississippi—Code Miss. 1942 § 1762 et seq.

Nebraska—R.R.S. 1943 (R.S. Supp. 1967), § 25–1601 et seq. Particular exemptions provided for women repealed in 1967.

New Mexico—N.M. Stats. Ann. 19–1–1 et seq.

North Carolina—Gen. Stats. of N.C., § 9–1 et seq.

North Dakota—N.D. Cent. Code, 27–09–01 et seq.

Oregon—ORS § 10.010 et seq.

Pennsylvania—17 P.S. § 971 et seq.

South Dakota—SDLC 1967, § 16–13–1 et seq.

Vermont—Vt. Stats, Ann., T.12, App. VII, Rules 1 to 31.

West Virginia—West Va. Code § 52–1–1 et seq.; Const. Art. 3, § 21.

Wisconsin—W.S.A. 246.15, 255.01 et seq.

NO DISTINCTIONS, FEMALE EXEMPTIONS

Alabama—Code of Ala. Tit. 30, §§ 21.21(1). A female has a right to be excused for good cause shown in the discretion of the judge (§ 21).

Connecticut—C.G.S.A., § 51–217 et seq. Exemption, if desired, for any woman who is a trained nurse in active practice, an assistant in a hospital or an attendant nurse or who is nursing a sick member of her family, or who cares for one or more children under the age of 16 years (§ 51–218).

Georgia—Code of Ga. Ann., § 59–106 et seq. Excuse provided for a housewife with children 14 years or younger (§ 59–112(b)), and any woman who does not desire to serve may notify jury commissioner to that effect and her name will not be placed in jury box (§ 59–112(d)).

Iowa—Iowa Code Ann., § 607.1 et seq. Exemption for registered nurses (§ 607.2(2)).

Kansas—K.S.A. 43–101 et seq. Duty of each township and city assessor to inquire of each woman elector whether she desires to be exempt from jury service (§ 43–117).

Louisiana—L.S.A.–R.S. 13:3055, 13:3056. A woman shall not be selected for jury service unless she has previously filed with the clerk of the court of the parish in which she resides a written declaration of her desire to be subject to jury service (13:3055).

Massachusetts—M.G.L.A. c. 234, § 1. Exemption for trained nurses, attendant nurses, mothers of children under 16 years of age or women having custody of such children, and women members of religious orders.

Minnesota—M.S.A. §§ 593.01 et seq., 628.49. A woman may be excused upon request in the discretion of the court (§ 628.49).

Missouri—V.A.M.S. § 494.010 et seq. Excuse provided for any woman who requests exemption before being sworn as a juror (§ 494.031(2)).

Montana—Rev. Codes of Montana, § 93–1301 et seq. Exemption provided for nurses engaged on a case of a "person" caring directly for one or more children (§ 93–1304 (12)).

Nevada—NRS 6.010 et seq. Exemption for any woman for one year periods upon filing of a written statement claiming exemption (6.020(3)).

New Hampshire—RSA 500:1 et seq. Exemption provided for any woman who has care of one or more children under the age of twelve years if she so desires (500:1).

New Jersey—N.J.S.A. 2A: 69–1, 2A: 69–2. Exemption for any "person" who has the actual physical care and custody of a minor child.

New York—Judiciary Law, §§ 500 et seq., 590 et seq. Exemption provided for a woman (§§ 507(7), 597(7)).

Ohio—Page's Ohio Rev. Code Ann. § 2313.01 et seq. Exemption for registered nurses and nuns (§ 2313.34).

Oklahoma—38 Okl. St. Ann. § 28. Exemption, if claimed, for all women with minor children.

Rhode Island—Gen. Laws of R.I., 9–9–1 et seq. A woman can be excused upon notice (9–9–11).

South Carolina—Code of Laws of S.C., § 38–52 et seq. Excuse, declared by presiding judge, for any woman who has the legal custody and duty of care of a child under seven years of age.

Tennessee—Tenn. Code Ann. § 22–101 et seq. A woman has the option of serving or not when summoned to jury duty (§§ 22–101, 22–108).

Texas—Vernon's Ann. Civ. St. Art. 2133, art. 2135. Exemption for all females who have legal custody of a child or children under the age of sixteen (art. 2135(7)), and for all registered, practical and vocational nurses actively engaged in the practice of their profession (art. 2135(8)).

Utah—Utah Code. Ann. § 78–46–1 et seq. Exemption for a female citizen who has the active care of minor children (§ 78–46–10 (14)).

Virginia—Code of Va., § 8–174 et seq. Women are exempt (§§ 8–178(30), 8–182).

Wyoming—Wyoming Stats Ann. § 1–77 et seq. A woman may be excused from jury service "when household duties or family obligations require her absence" (§ 1–80).

WASHINGTON

The provisions of Washington relating to women serving on juries have been isolated here for separate treatment only because a reading of the pertinent provisions thereof makes it unclear as to which of the two categories mentioned above it belongs. In fact, a literal reading would appear to indicate that although women are qualified to be jurors, if they have an exemption, it is mandatory that they exercise it.

Prior to 1967, RCWA 2.36.080 provided an exemption for women. In a law approved March 15, 1967, this section was amended and no longer provides for an exemption for women. On March 21, 1967, the provision dealing with the drawing of jury lists was amended (RCWA 2.36.060), and this sentence can now be found therein: "Any woman who upon being listed upon the list as in this section provided shall claim her exemption to serve as a juror, shall not be listed in the preparation of the list of jurors."

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SEX DISCRIMINATION AND "PROTECTIVE" LABOR LEGISLATION

(By Susan Deller Ross, Arthur Garfield Hays Civil Liberties Fellow, New York University Law School)

PART I: INTRODUCTION

In 1970, the Equal Rights Amendment to end sex discrimination against women has gained new political impetus. Yet many continue to oppose the proposed Amendment—or equal legal treatment for women under the 14th Amendment to the Constitution—because they fear that it would invalidate a great variety of State labor laws applying only to women workers. These laws have traditionally been considered to be important labor standards legislation, providing genuine protection to women workers.

Recent developments have thrown doubt on that proposition. The most important of these is Title VII of the 1964 Civil Rights Act, which prohibits job discrimination on the basis of sex. Title VII has had a decisive effect on these State laws. In addition, both the Equal Employment Opportunity Commission (EEOC) and numerous States have challenged the laws. Finally, women's groups and labor unions have also gone on record against the State labor laws.

It is therefore imperative to reexamine that opposition to the Equal Rights Amendment which has been based on the need to preserve State labor laws for women. This paper sets forth the new factors to be considered in that reevaluation.

PART II: BACKGROUND INFORMATION

Before turning to the analysis of these various factors, some background information about employed women should be presented. More than one-third of the nation's working force is female. But women are funneled into low-paying, low-prestige jobs with little or no chance for advancement. Sex is as important as race in determining salaries. Thus, the full-time employed white male had a median income in 1968 of $7,870; the black male, $5,314; the white woman, $4,580; and the black woman, $3,487. Women college graduates employed year-round full-time earned less than men high school dropouts. Women high school graduates earned less than men with less than 8 years of education.[1]

As EEOC has pointed out—the difference between the average work-life expectancy of men and women has narrowed significantly. Yet: In 1968, the unemployment rate for women was much greater than for men, 4.8% compared to 2.9%.

Many women hold jobs which are far below their training and talent. In 1968, approximately one-fifth of working women who had completed four years of college were non-professional; employed in clerical, sales, service worker or semi-skilled operative categories.

Women not only are concentrated in the lower-level jobs, but are paid relatively less than men for comparable work. The median income of year-round full-time workers in 1966 was:

Men	$6,848
Women	$3,973

In 1966, less than 1% of women earned salaries of $10,000 or more; the proportion for men was almost 20 times greater.[2]

In response to this kind of situation, Title VII of the Civil Rights Act of 1964 was passed. Broadly speaking, it prohibits discrimination in employment on the basis of sex. There are numerous exceptions to this doctrine,[3] but the most important one is the "bona fide occupational qualification" exception of § 703(e), otherwise known as a "bfoq". Under this section, an employer is allowed to discriminate on the basis of sex if he can show that sex is an occupational qualification for the job in question. Thus, a broad interpretation of the bfoq (which the courts have ultimately refused to adopt) would have practically nullified the prohibition on sex discrimination, since many admitted cases of discrimination could thereby have been excused as necessary to a business. In the context of the bfoq, then, State "protective" labor legislation, "protecting" women only against various supposed evils, was of crucial importance, since it was originally possible to interpret these laws as coming within the bfoq exception, thus allowing employers to refuse to hire or promote women where violation of a State law would occur. For example, if a State prohibits women from working more than 48 hours a week, and a woman applies for a higher paying job requiring work of 50 hours a week, the employer could refuse her the job under a broad interpretation of the bfoq exception. His sole ground would be that she is a woman, and because of the State law and the requirements of the job for 50 hours of work, only men can fill the job; that is; the male sex is a bfoq for any job requiring more than 48 hours of work per week.

Restrictive labor legislation applicable to women only offered a way out to employers bent on discrimination, then, and it was not a minor out. In order to understand this out, these State laws should be analyzed more closely.

PART III: RESTRICTIVE STATE LAWS APPLICABLE TO WOMEN ONLY

There are many categories of such State legislation, but basically it can be broken down into two broad types: 1) *laws conferring supposed benefits*, such as minimum wages, a day of rest, a meal or rest period, maternity benefits, provision of chairs for rest periods, and; 2) *laws prohibiting women from working* in certain jobs, such as in mining or bartending, or under certain conditions—i.e., weight limits and hour limits have been imposed on women's jobs, and nightwork and work before and after childbirth is either prohibited or restricted. At first glance, it might appear that these laws would help women, and indeed, the rubric of "protective legislation" augments that impression. The President's Commission on the Status of Women and some labor unions have accepted that interpretation. The EEOC originally subscribed to a version of that view, although, as will be shown later, it has now categorically rejected it.

But closer analysis of the State legislation is required before a favorable interpretation can be accepted. Initially, it should be noted that business observers of the early legislative period . . . allege that the motivation for 'protecting' child and female labor was more the protection and advancement of the male's status at work than a humanitarian attitude for the women and children in our society. The National Safety Council subscribes to this view by describing unreasonable statutory limitations and tacit unfair employment practices as a deliberate attempt to exclude the possibility that a large group of workers (women) may enter into competition with those already in the trade (men).[4]

Two Congresswomen, speaking in support of the sex amendment to Title VII subscribed to the same view. Representative Griffiths stated:

"Some people have suggested to me that labor opposes 'no discrimination on account of sex' because they feel that through the years protective legislation has been built up to safeguard the health of women. Some protective legislation was to safeguard the health of women, but it should have safeguarded the health of men, also. Most of the so-called protective legislation has really been to protect men's rights in better paying jobs."[5]

Representative St. George, speaking against nightwork prohibitions for women, stated:

"Protective legislation prevents, as my colleague from the State of Michigan just pointed out—prevents women from going into the higher salary brackets."[6]

Support for this view can also be gathered from situations where all male or male-dominated labor unions have clearly sought to exclude women from work or from the most remunerative job categories. For example, the Bartender's League of America once picketed a restaurant and tavern owner to secure a union shop agreement which would exclude women members and therefore force the employer to fire three female employees.[7] It is no accident that labor unions are often co-defendants with employers in suits charging sex discrimination under Title VII,[8] since they engineer collective bargaining agreements which clearly discriminate against their women members. For example, one might point to the description of the collective bargaining agreement in *Bowe* v. *Colgate-Palmolive Co.*, 272 F. Supp. 332, 340–47 (S.D. Ind. 1967), *reversed* 416 F. 2d 711 (7th Cir. 1969), which reserved the highest paid jobs for men only. (This raises the interesting question of whether labor unions are fulfilling their duty of fair representation as to their female members.)

However, even aside from the question of the motivation for the legislation, a closer examination of the legislation will show that it often actively hurts women, and fails to help where help is needed. The most obvious harm is that both categories of State legislation have been used as an excuse not to hire women or not to promote them to better paying jobs. This should be clear as to the whole second class of legislation, which, it will be remembered, actually *prohibits* the employment of women in specified situations; and a study of the case law reveals the details of how this system works to deny jobs to women (for the case law, see Part V of this memorandum).

The discriminatory effect is also true as to the first category of "benefit" legislation, since even when an employer complies with the applicable laws, compliance can hurt women's employment opportunities. For example, in one EEOC case, a Washington State law requiring 30-minute lunch breaks for women only was used by an employer to create different work shifts for men and women. The men received no formal lunch break—but ate "on the fly"—and worked in three regular 8-hour shifts. In contrast, women were given a lunch break, but to do this, the employer cut the day's third shift to 6 hours and 45 minutes. With a weekly rotating schedule of shifts, every third week a woman's pay check would be cut from pay for 40 hours to pay for 33¾ hours. Over a work year of 50 weeks, the "protection" of a lunch break would thus cost a woman employee the loss of 2⅜ weeks of take-home pay—rather a costly lunch break. And in the bargain, if lunch breaks are really considered that important to a worker's health, all the male employees were exploited by the denial of a formal lunch break. Ironically enough, the EEOC found that the State law did not require this result—but the important fact for our attention is how the *employer* had interpreted State law.

Another example of the harm caused by this kind of benefit is found in *Richards* v. *Griffith Rubber Mills*, 300 F. Supp. 338 (D. Ore. 1969), where one of the grounds relied on by the employer to deny a woman's application for the job of Press Operator B (and give it to men with less seniority) was a union contract requiring two ten-minute rest periods for women. It can be seen then, that such "benefit" laws hurt women by denying them job opportunities and hurt men by denying them the "benefit". The same cannot be said about the prohibitory category of laws, since to confer their "pro-

Footnotes at end of article.

tection" on men would not help men but would only serve to eliminate many jobs—*e.g.*, bartending, mining, jobs requiring the lifting of 25 pounds, jobs requiring overtime work (with premium pay rates), and so forth. These laws hurt only women then: those women who are perfectly capable of fulfilling the prohibited jobs, and in fact, anxious to do so for the pay, the pay increase, the improvement in status, the increased job satisfaction, the preferred hours, or whatever factor may motivate a particular woman to want a particular job.

Turning to a more detailed analysis of State laws, further inadequacies can be discovered. The following tables show the patterns of these laws. The tables are based on information available in December 1968,[9] but even though they are not completely current, they do indicate the general trends.

STATE "BENEFIT" LAWS

Type of law	Number applicable to women only	Number applicable to men and women
Minimum wage	7 3 (not in operation).	29; District of Columbia; Puerto Rico; Federal Fair Labor Standards Act.
Day of rest prescribed	14; District of Columbia.	7; Puerto Rico, 28; ("Sunday blue laws" which achieve the same result), 35; Puerto Rico.
Meal period (20 minutes to 1 hour).	20; District of Columbia; Puerto Rico.	3.
Rest period (10 minutes for each ½ day of work).	12; Puerto Rico	0.
Chairs to be provided	44; District of Columbia; Puerto Rico.	1.
Maternity benefits	2; Puerto Rico	
Job security during absence for childbirth.	0; Puerto Rico	

STATE LAWS PROHIBITING EMPLOYMENT

Occupations totally	26—Including— 17—Work in or about mines. 10—Bartending. 1—Work in retail liquor stores. 11—Other occupations, including wrestling.	0.
Weight limits (work requiring lifting more than set amount—ranging from 15 to 50 pounds—is prohibited).	10; Puerto Rico	0.
Hour limits (work over the limit—with desirable premium pay rates for overtime—is prohibited).	38; District of Columbia (3 of the 38 States cover both men and women in some industries; only women in others).	3.
Nightwork (either prohibited or regulated).	18; Puerto Rico	0.
Childbirth (employment before and after prohibited).	6; Puerto Rico	

It is evident from the bare outlines that so-called protection has been very uneven. For instance, while women are chivalrously allowed chairs for rest periods in 45 States, they are given job security for maternity leaves of absence in *no* State, and maternity benefits in only two. Surely the latter are the more important to women, and surely it is revealing that legislatures have so overwhelmingly chosen chivalry over substantive protection in the area where women always need protection that men do not need. This should not be allowed to obscure the fact that not all women become pregnant, and that laws dealing with this subject do not need to treat women as a class, but only pregnant women.

Ohio regulations go so far as to prohibit women's employment: As crossing watchman, section hand, express driver, metal moulder, bellhop, gas or electric meter reader; in shoeshining parlors; bowling alleys as pinsetters, poolrooms; in delivery service on motor-propelled vehicles of over 1-ton capacity; in operating freight or baggage elevators if the doors are not automatically controlled; in baggage and freight handling by hand trucks of heavy materials of any kind; operating emery wheels, belts; in blast furnace and smelter.[10]

Another interesting revelation is that in the "benefit" areas which most people would consider most important—*i.e.*, minimum wage and a day of rest—men *do* receive substantial protection. In fact, as to the minimum wage, Federal nationwide law covers both men and women, at *higher* rates than State law except one (Alaska). Of course, the fact does remain that a few men could be hurt in the 7 States with no minimum wage for men where they are not covered by Federal standards, and in the 14 States where men are not included in the coverage of the day of rest statute. This would seem to be the major area where attempts at ending sex-discriminator laws could focus on *extending* female protection to men under both Title VII and the equal protection clause of the 14th Amendment.

More important, the existence of minimum wage laws applying to women only in 7 States should not be allowed to obscure the fact that such laws simply do not deal with the *real* problem for women—exploitation by being underpaid and funneled into the lowest-paying, most menial jobs of our society. Women constitute more than 75% of the total employed in the following fields: bookkeepers; cashiers; dressmakers, seamstresses; housekeepers, private-household; nurses, professional; office-machine operators; operatives, apparel and accessories; operatives, knitting mills; practical nurses; schoolteachers; stenographers, typists, and secretaries; telephone operators; waitresses.[11] Preserving minimum wage laws for women has only resulted in a situation where full-time employed women earn about 60% of what full-time employed men earn.[12] That is why it was necessary to pass the Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964.

In remaining areas of State laws, the crucial fact is that these laws either directly prohibit the employment of women who want to do certain jobs or are used as excuses by employers not to hire women. This has already been pointed out as to lunch hours and rest periods, and the later section on case law under Title VII (Part V) reveals the same pattern as to prohibited jobs and weight and hour limits. Under the aegis of such laws, women seeking work in retail liquor stores or as bartenders are denied the chance; female employees who have worked for as long as 19 or 22 years bid for higher paying jobs as switchman or agent-telegrapher and see them go to men with less seniority; women are closed out, under a union contract, from the most highly paid jobs in a plant and are also laid off before men with less seniority; women telephone operators, framemen, and engineers who want to work longer hours are forbidden to do so; jobs such as press operator and commercial representative are closed to women and again go to men with less seniority.

Both the EEOC and the Federal judges have begun to realize that the weight and hour limits are not justifiable because they are not based on scientific proof that all or substantially all women cannot lift certain amounts of weight or work more than a set number of hours. Two cases are especially noteworthy; *Cheatwood* v. *Southern Bell Telephone & Telegraph Co.*, 303 F. Supp. 754 (M. D. Ala., 1969), and *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969).

Both explore the concept of weight limits at length in light of contemporary studies and scientific knowledge (see discussion infra, at pp. 14–15). It is no more scientifically demonstrable that women have different health needs as a class in the hours area than do men, yet the pervasive hours limits (applying to women in a total of 41 States and in D.C., but to men in only 3 States) have the effect of preventing women from earning extra money, often at premium overtime rates. This is especially important when it is recalled that women head 4.6 million families (10% of U.S. families; 25% in the poverty area), that 1 million working women have unemployed husbands (disabled or retired), and that 6 million working women are single.[13] Single men and male heads of household are presumed to want and need extra money; single women and female heads of household are presumed not to. It may be true that some women do not want to work overtime; it may also be true that some men do not want to work overtime. Judging from the number of States (3) where men are covered by hours laws, it would appear that the majority of men prefer advantageous overtime. Women should not be discriminated against by exclusion from this lucrative area, in the name of 1) family responsibilities which millions of working women do not have, and which millions of others deem secondary to the need for more money, 2) alleged "female" health needs which cannot be scientifically proven to exist, and 3) a supposed feminine lack of desire to make more money, which the poverty status alone of many women would seem to contradict.

One additional point should be made about the weight and hours laws, and indeed, about all the laws based on the premise that all women and no men need special protection. The reality is that such laws simply do not accomplish their aim—*real protection*. Real protection would not bar a 5'10" woman who weighs 180 pounds from lifting 15 pounds (which will enable her to earn $1000 more per year) nor could it force a 5'4" man who weighs 130 pounds and has a hernia to lift 100 pounds on a regular basis. Real protection would not bar from overtime and premium pay hours a single girl who is trying to save money for college or a widow who is the sole support of two teenage sons; nor would it limit a family which prefers an arrangement whereby the father cares for his children and does not work overtime while his wife works at night, for instance, as a nurse.

The point is that sex as a criterion cannot predict with sufficient accuracy who needs what protection. If injury due to lifting weights is a problem the answer is to find out what every *individual* can safely lift with modern techniques and then forbid employers to fire individuals who refuse to lift weights above that limit. If some men and some women don't want to work overtime and unions want to protect the right not to work overtime, laws should be passed forbidding employers to fire those who refuse overtime, but those men and women who *do* want overtime pay should not be penalized because of the desires of those who do not want it.

As for night work, men must come to realize that many women might *prefer* to work at night—for better pay or because husbands could take care of children at this time or because they could study at this time while going to school in the daytime, and so. As Congresswoman St. George once pointed out rather bitterly, nightwork laws don't protect scrubwomen, but do "protect" women from working in such nighttime jobs as elevator

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operators where the work is less than during the daytime and the pay is more.

Finally, women should not be forced to quit work when pregnant, or to stay away from work after childbirth, unless it can be scientifically *proved* that that particular woman is incapable of performing that particular job at that particular time. Even then perhaps employers should be required to transfer a pregnant woman into a job she can do if she wants to continue work. A skeptical eye should be cast on legislation which may reflect male embarrassment at having pregnant women around them, rather than a concern for women's safety, especially when it is remembered that the housewife cannot stop working just because she is pregnant.

It should be noted that pregnant teenage girls (married or not) are usually expelled from school when the fact becomes evident—hardly the best way to manifest concern for their welfare. In contrast, New York City has set up special schools for pregnant students and has allowed them to choose whether to remain in their home school, transfer to the special school or not attend school. Attendance has been encouraged by school officials with great success.

In conclusion, analysis of State laws applying to women only does not support the idea that they protect women in any important way. In fact, these laws do not protect women in the one area clearly applicable to women only—maternity benefits and job security; they are ineffective in dealing with the exploitation of women through lower pay than men; they are used to discriminate against women in job, promotion, and higher-pay opportunities; and in those few areas where they might be said to have real value, they exploit men by subjecting them to bad working conditions. Even more important, the existence of these laws reflects a basic perception that all women and men are inherently different in the amount and kind of work they can do.

PART IV: THE EEOC RECORD

Even though restrictive State laws thus appear both undesirable and discriminatory, the EEOC was initially unsure what approach to take toward them as bfoq defenses in Title VII cases. Starting in 1965, it adopted successive, conflicting policies evidencing, at different times, a desire to avoid the controversy, an idea that some of the laws might be helpful, and a possibility that Congress had intended to leave State laws in effect. But recently the EEOC seems to have come to a final conclusion which is favorable to women and rejects the earlier policies.

The development of the final position can be traced in the regulations the EEOC has issued under 29 C.F.C. § 1604.1. The first was issued on December 2, 1965, and was based on the assumption that Congress had not intended to override State laws. In effect, the regulation allowed restrictive State laws to be used as a bfoq defense, provided that the employer acted in good faith and that the State law effectively protected women rather than discriminated against them. This last proviso begged the question, of course, since the EEOC did not explain what was protection and what discrimination. The "benefit" type laws (minimum wage, overtime pay, rest periods, or physical facilities) could not be used as a bfoq however, and in fact, in its case law, the EEOC requires not only that women be hired under these laws but that the benefit be extended to men.[14]

Less than a year later, on August 19, 1966, the EEOC announced in a press release, incorporated in all pertinent Commission decisions, that where there was a square conflict between Title VII and the State laws, it would refrain from making a decision, since EEOC interpretations could not insulate employers against State liability for violation of State statutes and since the EEOC could not institute suits to challenge the State law. It would, however, advise complainants of their right to bring suit, reserving the right to appear as amicus curiae, because it thought litigation was necessary to resolve the conflict.[15] It was apparent that the EEOC was beginning to be troubled by the State laws, for it dealt at length with the hours laws and a case then before the Commission which challenged the California version. A more realistic appraisal of State laws is now evident, when the Commission states:

"The facts indicate that the female charging parties are being denied promotional opportunities and the opportunity to earn premium pay for overtime. . . . There is no suggestion in the facts before us that the health or welfare of the charging parties would be adversely affected by permitting them to work in excess of 48 hours a week. . . .

"Over forty States have laws or regulations which, like California's, limit the maximum daily or weekly hours which women employees may work. . . . the Commission believes that in fact these laws in many situations have an adverse effect on employment opportunities for women.[16]

More than a year after this, on February 24, 1968, the EEOC rescinded the 1966 policy and reaffirmed the original 1965 guideline—that is, that the EEOC would decide whether State legislation was superseded by Title VII in cases where the effect of State law is discriminatory rather than protective. Again, "discriminatory" and "protective" were not defined, although the Commission did announce that it would consult with State authorities about the purpose and effect of the laws.

Finally, on August 19, 1969, the EEOC confronted the issue head on, and issued a complete new regulation, revoking 29 U.S.C. § 1604.1 (a) (3), (b) and (c), and substituting a new subsection (b). All mention of the "benefit" type law was omitted, and it was made clear that *no prohibitory law* could now be used as a bfoq. The new regulation reads as follows:

"(b)(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are *those which limit the employment of females, e.g.*, the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, or for more than a specified number of hours per day or per week.

"(2) The Commission believes that *such State laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy.* The Commission has found that *such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect.* Accordingly, the Commission has concluded that such laws and regulations conflict with Title VII of the Civil Rights Act of 1964 and will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception." (emphasis added).

This is an important development because the EEOC has recognized the unfairness of dealing with women as a class, and has gone on record against those discriminatory State laws which persist in treating women as a class with stereotyped characteristics. The EEOC stand should also strengthen the trend which has been developing in the Federal courts toward invalidating State laws. The next section of the memorandum will discuss this case law.

PART V: THE FEDERAL COURT APPROACH

By December 1968, the effect of Title VII of the 1964 Civil Rights Act on restrictive State labor laws applying to women only was still unclear. Up to that time, the courts had not really faced the issue. In *Coon* v. *Tingle*, 277 F. Supp. 304 (N. D. Ga. 1967), the court dismissed the constitutional challenge to the Georgia law—which prohibits women from working in retail liquor stores—on procedural grounds, but implied in dictum that it would abstain on this issue in any case. In *Mengelkoch* v. *Industrial Welfare Commission*, 284 F. Supp. 950, 956 (C. D. Cal. 1968), *appeal dismissed* 393 U.S. 83, the court actually adopted the abstention approach. The women plaintiffs were seeking an injunction against the enforcement of California's maximum hours law, but the court wanted to avoid unnecessary friction in the Federal system. And in *Ward* v. *Luttrell*, 292 F. Supp. 162 (E. D. La. 1968), fourteen women engineers, framemen, and telephone operators sought an injunction against the enforcement of the Louisiana maximum hours laws. The three-judge district court dismissed the constitutional equal protection and due process claims on the ground that they were unsubstantial, but remanded the case to a one-judge court for a hearing on the supremacy issue under Title VII. The court also ruled, in *Ward* v. *Luttrell*, 292 F. Supp. 165 (E. D. La. 1968), that the case could not be brought as a class suit, on the ground that not all women would like the result plaintiffs were urging, and therefore, plaintiffs could not fairly and adequately protect the interests of the class.

However, since those cases were decided, the courts have started dealing with the issue and a trend toward invalidating the State restrictive laws now seems to be developing.

The first case to announce the change was *Rosenfeld* v. *Southern Pacific Co.*, 293 F. Supp. 1219 (C.D. Cal. 1968), appeals pending Nos. 23,983 and 23,984 (9th Cir.) decided six months after the Mengelkoch decision. Leah Rosenfeld, an employee of 22 years, bid for the position of agent-telegrapher with Southern Pacific. Although she was the most senior employee bidding for the job, it was awarded to a male with less seniority, on the grounds that to award the job to plaintiff would violate the California hours and weight laws restricting the employment of women and would also violate company policy. The court held that the California hours and weight legislation discriminates against women on the basis of sex, that it does not constitute a bfoq, and that therefore the legislation is void as contrary to the supremacy clause.

The *Rosenfeld* court did not discuss the issues at length, but the First Circuit did do so in the landmark case of *Weeks* v. *Southern Bell Telephone & Telegraph Co.*, 408 F. 2d 228 (5th Cir. 1969), *reversing in pertinent part* 277 F. Supp. 117 (S.D. Ga. 1967). In *Weeks*, an employee of 19 years bid for the job of switchman, which was again granted to a male with less seniority, ostensibly on the ground that Georgia weight regulation (30 pounds limit for women) forbade awarding the job to a woman. This was in fact the ground relied on by the District Court in its holding for the defendant.

After the District Court had ruled, Georgia repealed the specific weight limit and in its place a rule was promulgated which applied also to men and limited the lifting of weights only ". . . to avoid strains or undue fatigue." Even though this legislation did not apply to all women, the company—significantly—still refused to consider plaintiff for the switchman position. On appeal, the company relied on the District Court's finding that the job was strenuous and on its right to use a private restrictive 30 pound weight policy for women only, contending that both factors came within the bfoq exception. The Circuit Court reversed the lower court and set forth a test for establishing a bfoq exception:

Footnotes at end of article.

"The employer has the burden of proving that he has reasonable cause to believe, *that is a factual basis* for believing, that *all or substantially all women* would be unable to perform safely and efficiently the duties of the job involved." (emphasis added)

It held that the company had failed to meet this burden, since it had submitted no evidence on the issue, but rather had relied on unproven, stereotyped assumptions about the lifting abilities of women. Finally, the court dismissed the company's alleged concern about emergencies and late-night work, in far-reaching language:

"A speculative emergency like that could be used as a smoke screen by any employer bent on discriminating against women. It does seem that switchmen are occasionally subject to late hour call-outs. Of course, the record reveals that other women employees are subject to call after midnight in emergencies. Moreover, *Title VII rejects just this type of romantic paternalism as unduly Victorian and instead vests individual women with the power to decide whether or not to take on unromantic tasks. Men have always had the right to determine whether the incremental increase in remuneration for strenuous, dangerous, obnoxious, boring or unromantic tasks is worth the candle. The promise of Title VII is that women are now to be on equal footing.* We cannot conclude that by including the bona fide occupational qualification exception Congress intended to renege on that promise." (emphasis added)

Of course, the *Weeks* decision is not directly relevant to the issue of the conflict between Title VII and restrictive State laws, since the Georgia regulation was repealed before the appellate decision. However, it should be added that the *Weeks* court cited the *Rosenfeld* decision with approval. More important, it established a test for the bfoq exception which could have a decisive role in invalidating restrictive State laws. It is difficult to imagine how States, employers, or labor unions are going to prove, for example, that all or substantially all women cannot lift more than 30 pounds, work more than 40 hours a week, or serve drinks safely and efficiently. Even the stereotyped model of the suburban housewife and mother is required to do all these tasks on a daily basis. Babies and groceries often weigh more than 30 pounds, work continues 12 hours a day, 7 days a week (84 hours), and it is certainly common social practice now for men and women to consume alcoholic beverages together without disorder, and female bartenders are common all over the country.

Finally, the *Weeks* decision is relevant to the conflict issue in its understanding that a broad interpretation of the bfoq exception would have the effect of completely nullifying Title VII.

The Seventh Circuit followed the *Weeks* lead, when it invalidated another company-imposed weight restriction (35 pounds) applied to women only in *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969). This case also has ramifications which could affect the resolution of the Federal-State law conflict. First, *Rosenfeld* is once again noted with approval. Second, the court holds that although the weight requirement is invalid, if applied only to women, the company can retain the weight lifting requirement, but apply it to all employees, both male and female. Any employee would be allowed to bid for any job, with an opportunity to prove his or her ability to do it. This approach could also be followed in those cases where State laws give some kind of benefit. In fact, this is being done in a suit brought on behalf of male farm workers in Wisconsin. Under Title VII and the 14th Amendment, they are seeking an injunction which would in effect extend the protection of the State minimum wage law to men, *Bastardo* v. *Warren*, No. 69–C–143 (M) (W.D. Wis.).

The facts of the *Bowe* case are also of interest in the patterns of discriminatory employment practices which they reveal. It is first of all apparent that the restrictive State laws can have an even greater effect than their strictly legal force. Even though there was no State weight law, Colgate-Palmolive deliberately set out to copy existing laws in other States. Revealingly, the company did not do so until after passage of Title VII, under which the existing sex-segregated job system in the plant would be illegal. By setting up a weight limit, the company in effect managed to retain a sex-segregated job system, at least for women.

Ironically, men did get some benefit from the new policy, which should be more fully explained. Under the old system, the plant was divided into male and female jobs—the highest pay in the female category being equal to the lowest pay in the male category. Under the new system, the 35 pound limit was used to keep the women in the same lowest-paying jobs, but allowed men to compete for these jobs also. This would not seem to be an advantage, until it is realized that workers were laid off on weekly basis, with bidding for the available jobs on a seniority basis. Thus, the most senior employees with first choice were least likely to be laid off every week. Under the old system, each sex could bid only for jobs within its sex classification. Under the new system, all could bid for any job for which they qualified. Since men qualified for all jobs, but women only qualified for the under-35 pound categories, men were now given a competitive advantage as to lay-offs over women with greater seniority. For example, if one supposes 50 under-35 pound jobs and another 150 plant-wide jobs, women could only bid for 50 jobs before being laid off. In other words, the company's "compliance" with a Title VII, designed to help women, succeeded in keeping women in the lowest paying jobs while increasing their competitive *disadvantage* with men as to lay-offs.[17]

The Circuit Court reversed the District Court's ruling that the weight limitation was *reasonable* and therefore a valid bfoq. Like the *Weeks* court, it realized that such a broad construction of the bfoq would in effect nullify Title VIII itself, and refused to adopt a test of reasonableness in establishing a bfoq.

The *Bowe* decision could also affect the resolution of the State law-Federal law conflict by its realistic treatment of weight limitations. The court sees the lower court's assumption that State laws were not affected by Title VII as erroneous, but goes further. It adopts the approach of the Secretary of Labor that *individual* qualifications and conditions should always be considered, and concludes that—

"Most of the State limits were enacted many years ago and most, if not all, would be considered clearly unreasonable in light of the average physical development, strength, and stamina of most modern American women who participate in the industrial work force."

Rosenfeld, *Weeks*, and *Bowe* are the leading cases in this area, but other cases indicate that other courts are heading in the same direction. In *Richards* v. *Griffith Rubber Mills*, 300 F. Supp. 338 (D. Ore. 1969), a company was held to have violated Title VII by awarding two jobs of "Press Operator B" to men with less seniority than the woman applicant. The company relied on two factors for a bfoq defense: 1) a union contract requiring two ten-minute rest periods for female employees, and 2) the Oregon weight lifting regulation. Chief Judge Solomon ruled that the union contract could not be used to discriminate on the basis of sex, and that the Oregon regulation was void under the supremacy clause citing *Rosenfeld* and *Longacre* v. *Wyoming*, 448 P. 2d 832 (1968). In interpreting the bfoq, the court noted that, "Except in rare and justifiable circumstances, 42 U.S.C. § 2000e–2(e), *the law no longer permits* either employers or the *States to deal with women as a class* in relation to their employment *to their disadvantage*." (emphasis added)

Longacre, cited by the *Richards* court, was not directly in point, since Title VII was not in issue, but it does reinforce the trend toward invalidating restrictive State laws. The State court there held that the State law prohibiting the employment of female bartenders was repealed by implication by the State Fair Employment Practices Act, which prohibited discrimination in employment on the basis of sex.

Another bar maid ordinance is involved in *McCrimmon v. Daley*, 61 LC 9352 (7th Cir. 1969). The District Court had dismissed, *sua sponte*, the challenge to the Chicago ordinance—prohibiting the employment of female bar maids—on the ground that it was not subject to constitutional attack, relying on *Goesart v. Cleary*, 335 U.S. 464 (1948). The Circuit Court reversed the dismissal, hinting that *McCrimmon* could be distinguished from *Goesart*, and also that there might be a violation of Title VII. (This issue had not been raised in District Court.) The case was remanded for a hearing on these issues.

One final case which could be used by the courts to help invalidate State laws is *Cheatwood v. South Central Bell Telephone*, 303 F. Supp. 754 (M.D.Ala. 1969). In an opinion by Judge Johnson, the author of the *Weeks* opinion, the court dealt at length with another company-imposed weight limit of 40 pounds, which had been used to deny the job of commercial representative to a woman. The court swiftly dismissed the company's supposed fears about a woman changing tires and collecting money in bars and poolrooms, characterizing the first as a makeweight and the second as having no functional relationship to sex (adding that no one was forced to bid for the job).

More interesting, however, was the prolonged discussion of the weight issue. For the first time, proof was taken on the issue of whether all or substantially all women were incapable of performing the job safely and efficiently (the *Weeks* test for a bfoq).

The job did require lifting heavy coin box cases, varying from 45 to 80 pounds and averaging 60¾ pounds. Occasionally, a case weighed over 90 pounds. Two doctors testified on the musculo-skeletal and genetic differences between men and women. The doctor which the court found more reliable stated that 25 to 50 percent of all women could perform the job; and even the defendant's doctor admitted that at least some women could perform the job. On the basis of this testimony, the court held that the employer had not met the burden of proof necessary to establish a bfoq, and enjoined the employer to reconsider all applicants for this job on the basis of their individual qualifications. The opinion is noteworthy for its scientific treatment of women's lifting abilities. Such an approach would go far toward invalidating the restrictive State laws.

Two cases which do not fit into the above general pattern should be mentioned. The first is *Gudbrandson v. Genuine Parts Co.*, 297 F. Supp. 134 (D. Minn. 1968). A company-imposed weight limit (40 pounds) was here upheld. However, the case was decided only a month after the *Rosenfeld* decision, and relies on the lower court decisions in *Weeks* and *Bowe*, both of which were subsequently overruled, as well as on an early EEOC guideline which has also been rejected. The case would thus appear to carry very little weight as precedent.

More important is the recent case of *Phillips* v. *Martin-Marietta Corp.* 411 F. 2d 1

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(5th Cir. 1969), in which the court held it was not discrimination based on sex for an employer to refuse to hire mothers of pre-school age children when father of pre-school age children could be hired, since sex was not the only factor involved in the decision. Of course, the potential impact of such a doctrine is very broad; as Chief Judge Brown pointed out in his dissent to the denial of a rehearing, 416 F. 2d 1257 (5th Cir. 1969). "If 'sex plus,' stands, the Act is dead." Accordingly, the NAACP Legal Defense Fund has agreed to take the case for an appeal to the Supreme Court. However, the case is not directly relevant to the question of whether restrictive State laws will be allowed to stand under the bfoq exception, or will fall under the supremacy clause, since the company did not raise a bfoq defense. The issue, as formulated by the court, was whether the company policy *constituted* discrimination based on sex, not whether such discrimination was *allowed* under the bfoq exception.

In conclusion, then, it appears that, starting with *Rosenfeld*, recent cases support a trend toward invalidating restrictive State laws applying to women only. This trend is evidenced by invalidation either of State laws or of company policies that parallel State laws. The relevance of the latter type of case is strengthened by court approached to the bfoq which could readily be applied to invalidate the State laws.

PART VI: CONCLUSION

The analysis above shows that State labor laws applying to women only are discriminatory and harmful, and that they have been rejected by the EEOC and the Federal courts. It should also be pointed out that NOW (National Organization for women), the most establishment-oriented of the new women's rights groups, is also strongly opposed to these State laws, stating, "NOW believes that State labor standards which are applicable only to women are inconsistent with the concept of equality."[18] NOW, also supports the Equal Rights Amendment. Betty Friedan, the past president of NOW, also had this to say about the new EEOC regulations of August 19, 1969:

"The EEOC finally ruled that equal employment opportunity under the Federal law superseded the so-called State protective laws—which means that we have won all of our major goals reversing the original travesty of Federal enforcement of the civil rights' law on sex discrimination which led to NOW's founding in 1966."[19]

Some labor unions have also taken a stand against the State laws. In Wisconsin, the first State Women's Conference for the AFL–CIO was held on March 7, 1970. The women delegates passed resolutions in favor of the Equal Rights Amendment and opposing State labor laws for women. They stated:

"This Wisconsin State AFL–CIO Women's Conference recognizes that the protective laws for women passed in the early 1900's may well have met the needs of the time, but today serve only to limit opportunity in employment for women and discriminate against both men and women.

"We further realize that certain decent minimum standards of treatment for all workers regardless of sex are necessary."[20]

As early as May 1967, Counsel for the International Union, UAW, and the International Chemical Workers testified at EEOC Hearings in opposition to the State labor laws. Steven Schlossberg, for the UAW, stated that:

"More and more employers have been able to discriminate against women because of anachronistic, so-called "protective" State laws regulating the employment of women. Because of State laws and regulations limiting the weights a woman may lift, or the hours a woman may work, employers have been able to deprive women of jobs, promotions and overtime. Provisions in UAW collective bargaining contracts prohibiting discrimination and regulating senority are avoided and evaded through employer reliance on these outmoded laws.

"It is a plain fact of life that the discrimination against women in the employment market is class discrimination almost as gross and as evil as race discrimination. It cannot be rectified through a faint-hearted approach."[21]

David Feller, a distinguished labor attorney, speaking for the International Chemical Workers, found the same patterns of discrimination against women under the cover of State labor laws:

"And what is in fact happening as a result of the simultaneous existence of State protective legislation and Title VII is that the impact of the law as it is being administered today [a policy changed since 1967] is to deprive women of job opportunities—not simply not to help them—but actively hurt them."[22]

Finally, many States have modified State policy in view of Title VII. Measures have included: outright repeal of laws (3 States); rulings that State laws are superseded by Title VII (8 States); rulings that Title VII prevents prosecution under State laws (2 States); exempting women workers who are subject to the Fair Labor Standards Act from State hours laws (6 States); providing exemptions for women workers who apply for them (1) or sign special agreements (1); and, extending laws to men (1).[23]

In conclusion, then, conditions today do not warrant support for State labor laws which discriminate against women on the basis of sex. The EEOC, Federal courts, women's groups, labor unions, and States have all begun to recognize this fact. Therefore, "protective" labor laws for women should no longer furnish any basis for opposition to the Equal Rights Amendment.

FOOTNOTES

[1] U.S. Department of Commerce, Bureau of the Census, CPR 60, No. 66.

[2] EEOC, "Toward Job Equality for Women" (1969), 1–2.

[3] Broadly speaking, employers and labor unions having fewer than 25 employees or members, and employment agencies dealing with such employers are not covered. In addition, the national, State, and local governments and agencies are exempted, as well as U.S. public corporations. Other exempt categories include Indian tribes, private clubs, religious groups, and educational institutions. Communist employees are not protected. Finally, where sex, religion, or national origin (but *not* race or color) is a "bona fide occupational qualification," discrimination is permitted. See §§ 701, 702, 703 of the Act.

[4] Cromer, "Sex Discrimination in Private Employment: The Conflict Between the Civil Rights Act of 1964 and State Labor Laws for Women," An advanced Study Project in Industrial Relations for degree of Master of Business Administration (1967), 13.

[5] 110 *Cong. Rec.* 2580 (1964).

[6] *Id.*

[7] *Wilson v. Hacker*, 101 N. Y. S. 2d 461 (1950); see also, Kanowitz, *supra*, at 278, n. 11 for other examples of discriminatory collective bargaining agreements.

[8] Examples are the *Rosenfeld* and *Bowe* cases, cited and discussed, *infra*, at 11–14.

[9] U.S. Department of Labor, Women's Bureau, *Summary of State Labor Laws for Women* (March 1969).

[10] *Id.* at 18.

[11] Cromer, *Supra*, at 5.

[12] Remarks of President Kennedy in signing Equal Pay Act cited in *Phillips* v. *Martin-Marietta Corp.*, 416 F. 2d 1257, n. 15 (5th Cir. 1969).

[13] Remarks of Congresswoman Green, cited in Phillips, *Supra* n. 13.

[14] EEOC, "Toward Job Equality for Women" (1969), 7.

[15] Brief for the EEOC as Amicus Curiae, *Rosenfeld* v. *Southern Pacific Co.*, Nos. 23, 983 and 23, 984 (9th Cir.), 33.

[16] *Id.*, at 32.

[17] These facts are outlined in the lower court decision, 272 F. Supp. 332, 340–347 (S.D. Ind. 1967).

[18] NOW brochure.

[19] Friedan, Newsletter to Members of NOW, November 1969, 2.

[20] Proceeding of Women's Conference, Labor Temple-Wisconsin Rapids, Wisconsin, March 7, 1970, 7–8.

[21] Statement of the International Union, UAW to the Equal Employment Opportunity Commission at Public Hearing on May 2, 1967, 4, 9.

[22] Transcript of Hearings, EEOC, May 3, 1967, 230–231.

[23] Government Actions Relating to State Protective Laws for Women Since the Enactment of Title VII of the Civil Rights Act, C. East, Citizens' Advisory Council on the Status of Women, Washington, D.C. 20210.

(From 55 Cornell L. Rev. 262 (1970))

THE SUBMISSIVE MAJORITY: MODERN TRENDS IN THE LAW CONCERNING WOMEN'S RIGHTS

(Faith A. Seidenberg*)

The popular assumption that the law is even-handed does not hold true in the area of women's rights. Under the guise of paternalism (and you notice the word refers to a father), women have systematically been denied the equal protection of laws. Recently, however, there has been an upsurge of the feminist movement, and men are being forced to take a second look at some of the paternalistic laws they have propounded. Although challenge to the laws adversely affecting women is presently at about the same stage that the civil rights movement occupied in the 1930's, in the last few years there has nevertheless been a small beginning towards equal rights.

I: CRIMINAL LAW

The idea that a "bad" woman is much worse that a "bad" man probably can be traced to the witch hunts that took place in the early days of the American Colonies; however, it survives to the present day. For example, it is a crime for a woman to engage in prostitution[1] but not for her customer to use her services. She is breaking the law, it seems, while he is only doing what comes naturally. However, in *City of Portland* v. *Sherill*[2] a city ordinance that punished women but not men who offered themselves for immoral purposes was held unconstitutional.

In addition, in several states higher penalties are imposed on a woman who commits a crime than on a man who commits the same crime.[3] The constitutionality of greater penalties for women was recently challenged in two cases. In *Commonwealth v. Daniels*[4] a woman was first sentenced to a term of from one to four years for the crime of robbery; one month later the sentence was vacated and the defendant resentenced up to ten years under Pennsylvania's Muncy Act.[5] The Muncy Act provided that a woman imprisoned for a crime "punishable by imprisonment for more than a year" should be sentenced to an indeterminate period of up to three years except when the crime for which she was sentenced had a maximum of more than three years, in which case she had to receive the maximum sentence. That is, for a crime carrying a sentence of one to ten years, a man might have been sentenced to one to four years, but a woman could only be sentenced to an indefinite term of up to ten years. The discretion of the trial judge to set a maximum term for a woman of less than the maximum for the crime involved was thereby eliminated. The Superior Court of Pennsylvania affirmed the trial court's action, hold-

Footnotes at end of article.

ing that longer incarceration for women is justifiable because of "the physiological and psychological make-up of women . . . their roles in society [and] their unique vocational skills and pursuits. . . ." [6] Whatever their significance, these characteristics did not convince the Pennsylvania Supreme Court that the Muncy Act's classification was reasonable. The court held that women are entitled to the protection afforded by the equal protection clause of the United States Constitution and, since the maximum sentence is the real sentence, that a sentence of ten years for women as opposed to four years for men is unconstitutional.[7] In *United States ex rel. Robinson v. York* [8] a federal district court held a Connecticut statute [9] similar to the Muncy Act unconstitutional. The decision was appealed by the state's Attorney General, but he withdrew the appeal after the decision came down in the *Daniels* case. Sixteen women, who had already served more time than a man's maximum sentence, were released.[10]

Criminal abortion statutes [11] are another example of the law's discrimination against women. That a woman has a right to control her own body is perhaps an idea whose time has yet to come, but there is at least a glimmering in some legal minds. Most lawyers and legislators, if they are talking about the subject at all, are still talking in terms of abortion reform instead of abortion repeal.[12] They discuss a need for change, but they sound a cautious note.[13] One case moving against the prevailing winds, however, is *People v. Belous*,[14] recently decided in the Supreme Court of California. The defendant was convicted for performing an abortion, and an amicus curiae counsel argued that

[t]he right of reproductive autonomy sought to be protected here is clearly more basic and essential to a woman's dignity, self-respect and personal freedom than those personal rights . . . for which Constitutional protection has already been afforded. Probably, nothing except death itself can affect a woman's life more seriously than enforced bearing of children and enforced responsibility for them for perhaps the remainder of her and their lives. The choice must be that of the woman unless some overwhelming state interest requires otherwise, and those state interests generally adverted to will be shown below to be significantly, for constitutional purposes, less important than the interest of the woman herself. That right should be protected to the fullest by a holding that no state interest can control this field.[15]

In New York two bills, one for reform of abortion [16] and one for repeal,[17] were before the state legislature in the spring of 1969. Only the former had any chance of passing. Had it not been for the National Organization for Women's coming out strongly in 1968 for abortion repeal,[18] followed by agreement by the State Council of Churches [19] and the American Civil Liberties Union [20] on this position, the bills would probably not have been considered at all. However, as is beginning to be seen in California, where the abortion laws were just reformed,[21] abortion reform is worse from the standpoint of freedom of choice for the woman than no reform at all.[22]

II: CIVIL RIGHTS

For untold years there have been so-called "protective" laws regulating the working conditions of women. Necessary changes are beginning to be made, but the progress is slow; even legal experts do not always recognize the full dimensions of the problem. One commentator, for example, has remarked of women's working laws:

With regard to social policy, the initial reaction is that the modern woman should not be subjected to state protective restrictions on her right to work should she choose to experience the conditions from which she is being protected. However, it is clear that the extent to which sex differences constitute "discrimination" is a question of degree, depending upon what social mores it seems desirable to perpetuate. . . . [Here], *considerations of preserving femininity and motherhood appear.*[23]

Unfortunately, this misses the point. The net effect of these laws is to limit the advancement of women in industry and, since women are everywhere the majority, to ensure that there is always a large supply of poorly-paid persons.

California has a particularly stringent system of governing women's employment. Section 1350 of the California Labor Code,[24] for example, prohibits an employer from employing women workers for more than eight hours a day or forty-eight hours a week. The effect of this restriction is to prevent women, solely because of their sex, from pursuing certain better-paid occupations, such as running test equipment, doing final assembly work, and working as supervisors, and from earning overtime pay in the positions they now hold. In addition, paragraph 17 of the California Industrial Welfare Commission's Order No. 9–68 [25] not only regulates wages, hours, and working conditions of women and minors in the transportation industry but also limits the number of pounds a woman may lift to twenty-five.

This regulatory system was recently challenged. In *Mengelkoch v. Industrial Welfare Commission* [26] plaintiffs asked that a three-judge court be convened because the constitutionality of section 1350 was an important constitutional issue to be resolved. The request was denied. However, in a similar case, *Rosenfeld v. Southern Pacific Co.*,[27] the judge ruled in favor of plaintiff. This case concerned both section 1350 and paragraph 17. In it, plaintiff, a woman, applied for a job that had just opened up at the defendant company's facilities at Thermal, California.

Although she was the most senior employee bidding for the position and was fully qualified, the company assigned a male with less seniority than plaintiff. The company never tested or evaluated plaintiff's ability to perform the work required, but argued that the appointment was within its discretion as an employer and, since plaintiff was a woman, that her assignment to the position would violate the California Labor Code. The court, however, held both that the California hours and weights legislation discriminates against women and is therefore unconstitutional and that defendant's refusal to assign plaintiff to Thermal was not a lawful exercise of its discretion as an employer.

Restrictions on the amount of weight a woman can legally lift [28] are under attack in other states. An employer's thirty-five pound limitation [29] was tested in *Bowe v. Colgate-Palmolive Co.*,[30] where the court held it legal and proper for an employer to fix a thirty-five pound maximum weight for carrying or lifting by female employees. In another case, *Weeks v. Southern Bell Telephone & Telegraph Co.*,[31] defendant company took the position that because the job of switchman required lifting weight in excess of thirty pounds, the legal limit in Georgia,[32] a woman could not hold the job. The company conceded that plaintiff had seniority over the male awarded the position and that she was paid $78 per week as opposed to the $135 she would receive if she were a switchman. The sole issue in the case was whether or not sex is a bona fide occupational qualification, entitling defendant to bar a woman, as such, from consideration for the job of switchman, her capacities notwithstanding. The lower court held for defendant, but the Fifth Circuit reversed, finding illegal discrimination based on sex.

Segregated "help wanted" advertisements are another aspect of discrimination against women. Although the Civil Rights Act of 1964 forbids most such ads to be placed in newspapers [33] and forbids discrimination by sex in employment, the Equal Employment Opportunity Commission guidelines [34] nonetheless allowed two columns classified by sex to stand in the newspapers. In July 1968, therefore, the National Organization for Women brought a mandamus suit against the EEOC to compel it to enforce the law as written. The court summarily dismissed the complaint, saying that obviously some jobs were better suited to men and others to women,[35] but the suit did cause the EEOC to change the guidelines to conform with the law.[36] The American Newspaper Publishers Association brought an action to enjoin enforcement of the guidelines; [37] both the district court and the court of appeals found for the EEOC. However, although the *New York Times* and some other New York newspapers have now desegregated their want ads, most newspapers around the country still refuse to abide by the law.

The public accommodations section [38] of the Civil Rights Act of 1964, unlike the employment section, does not forbid discrimination on account of sex. A test case [39] was recently brought in New York against a Syracuse hotel that does not allow women to sit at the bar unescorted, and the action was dismissed. The court emphasized, first, that there was no state action, since the women who sat in at the bar were not arrested; and second, because the public accommodation law does not forbid discrimination on the basis of sex, that the hotel could discriminate if it so wished.[40]

The case was not appealed because the author, whose case it was, thought it would be relatively easy to obtain state action in an arrest. Accordingly, she and another member of the National Organization for Women sat in at several bars, including one in New York City that has not served women for the last one hundred and fourteen years. Although they suffered many indignities, they were not arrested. The author then decided to bring an action in a New York state court under a new section of the state civil rights law [41] that makes it illegal to refuse to serve a customer "without just cause." Summary judgment was granted to defendants and the case was dismissed. The author filed a third case, however, that was heard on August 6, 1969 and that was decided in favor of plaintiff.

III: PRIVATE LAW

Some colleges have strict rules covering the hours when coeds must be in their dormitories and an inflexible system of signing in and out.[42] Regulation is the product of the idea that a university stands *in loco parentis* to its students, an idea that is hopefully changing. After all, a married women of eighteen is considered to be "emancipated" from her parents under the law. [43] Why then is a college student living away from home not equally adult? But in any case, the rationale is not consistently applied; male students are not subjected to the same restrictions as women in the use of the dormitories, or even to the requirement that they live on campus. The Oneonta College curfew was challenged, but the case was dismissed on technical grounds without examination of the merits. Possibly because of the suit, however, the college voluntarily rescinded its curfew regulations,[44] so the students were the ultimate winners.

A double standard is also apparent in the law governing married women. Under present law, a married woman loses her name and becomes lost in the anonymity of her husband's name. Her domicile is his no matter where she lives,[45] which means she cannot vote or run for office in her place of residence if her husband lives elsewhere. If she wants an annulment and is over eighteen, in certain cases she cannot get one,[46] but her husband can until he is twenty-one.[47] In practice

Footnotes at end of article.

if not in theory, she cannot contract for any large amount, borrow money, or get a credit card in her own name. She is, in fact, a non-person with no name.

Women receive little in exchange for this loss of status. Although in theory the husband and wife are one person, the relationship "has worked out in reality to mean . . . the one is the husband." [45] For example, husband and wife do not have equal rights to consortium,[46] the exclusive right to services of the spouse and to his or her society, companionship, and conjugal affection.[50] Until recently it was everywhere the law that only the husband could recover for loss of consortium, and this is still the law in about two-thirds of the states.[51] The major breakthrough came in 1950 in *Hitaffer v. Argonne Co.*,[52] which reversed the prevailing rule. In a more recent case, *Karczewski v. Baltimore & O.R.R.*,[53] the court concluded, "[m]arriage is no longer viewed as a 'master-servant relationship.'" [54] and in *Owen v. Illinois Baking Corp.*[55] the court held that denying a wife the right to sue for loss of consortium while permitting such suit to a husband violates the equal protection clause.[56]

The unreasonableness of denying an action for loss of consortium to the wife is well expressed by Michigan Supreme Court Justice Smith:

> The gist of the matter is that in today's society the wife's position is analogous to that of a partner, neither kitchen slattern nor upstairs maid. Her duties and responsibilities in respect of the family unit complement those of the husband, extending only to another sphere. In the good times she lights the hearth with her own inimitable glow. But when tragedy strikes it is a part of her unique glory that, forsaking the shelter, the comfort, and warmth of the home, she puts her arm and shoulder to the plow. We are now at the heart of the issue. In such circumstances, when her husband's love is denied her, his strength sapped, and his protection destroyed, in short, when she has been forced by the defendant to exchange a heart for a husk, we are urged to rule that she has suffered no loss compensable at the law. But let some scoundrel dent a dishpan in the family kitchen and the law, in all its majesty, will convene the court, will march with measured tread to the halls of justice, and will there suffer a jury of her peers to assess the damages. Why are we asked, then, in the case before us, to look the other way? Is this what is meant when it is said that justice is blind? [57]

CONCLUSION

In theory all persons should be equal, but in practice women are less "equal" than men. In all phases of life women are second-class citizens leading legally sanctioned second-rate lives. The law, it seems, has done little but perpetuate the myth of the helpless female best kept on her pedestal. In truth, however, that pedestal is a cage bound by a constricting social system and hemmed in by layers of archaic and anti-feminist laws.

FOOTNOTES

* President, Syracuse Chapter of National Organization for Women. B.A. 1944, J.D. 1954, Syracuse University.

[1] *See* THE SOCIAL EVIL (Seligman ed. 1902); George, *Legal, Medical and Psychiatric Considerations in the Control of Prostitution*, 60 MICH. L. REV. 717 (1962).

[2] No. M-47623 (Circuit Ct., Multnomah county, Ore., Jan. 9, 1967).

[3] *E.g.*, Pennsylvnaia, Connecticut. *See* statutes upheld in *Ex parte Gosselin*, 141 Me. 412, 44 A.2d 882 (1945); Platt v. Commonwealth, 256 Mass. 539, 152 N.E. 914 (1926).

[4] 210 Pa. Super. 156, 232 A.2d 247 (1967).

[5] PA. STAT. tit. 61, § 566 (1964), *as amended*, (Supp. 1969).

[6] 210 Pa. Super. at 164, 232 A.2d at 252. The philosophy of the statute is more cogently, if not convincingly, explained as follows:

> There is little doubt in the minds of those who have had much experience in dealing with women delinquents, that the fundamental fact is that they belong to a class of women who lead sexually immoral lives . . .
>
> [Such a statute] would remove permanently from the community the feeble-minded delinquents who are now generally recognized as a social menace, and would relieve the state from the ever increasing burden of the support of their illegitimate children.

Commonwealth v. Daniels, 210 Pa. Super. 156, 171 n.2, 232 A.2d 247, 255 n.2 (1967) (dissenting opinion). Oddly enough, the material quoted from the *Daniels* case was supplied by Philadelphia District Attorney Arlen Specter in a brief urging the *un*constitutionality of the Muncy Act.

[7] 430 Pa. 642, 243 A.2d 400 (1968). Shortly thereafter the Pennsylvania legislature enacted a statute that required the court to set a maximum sentence, but prohibited it from setting a minimum term. PA. STAT. tit. 61, § 566 (Supp. 1969).

[8] 281 F. Supp. 8 (D. Conn. 1968).

[9] CONN. GEN. STAT. ANN. § 17-360 (1958).

[10] Middletown Press, Aug. 12, 1968, at 1, col. 1 (Middletown, Connecticut).

[11] *E.g.*, CAL. PENAL CODE § 274 (West 1955). Prior to its liberalization in 1967, it was similar to statutes in 41 other jurisdictions. Leavy & Kummer, *Criminal Abortion: A Failure of Law*, 50 A.B.A.J. 52 n2 (1964).

[12] *But see* Brief for Appellant as Amicus Curiae at 37-38, People v. Belous, 71 Cal. 2d 996, 458 P.2d 194, 80 Cal. Rptr. 354 (1969), reporting that Father Robert Drinan, Dean of Boston College Law School, has come out for repeal on the grounds that it should be a matter of individual conscience, not law.

[13] *See, e.g.*, L. KANOWITZ, WOMEN AND THE LAW: THE UNFINISHED REVOLUTION 27 (1969):

> Though very few people would urge the legalization of all abortions, the principle of legal equality of the sexes is an additional reason for extending the circumstances under which therapeutic abortions should be legally justified.

[14] 71 Cal. 2d 996, 458 P.2d 194, 80 Cal. Rptr. 354 (1969).

[15] *Belous* Brief, *supra* note 12, at 10-11 (footnotes omitted).

[16] (1969) Assy. Int. No. 3473-A (Mr. Blumenthal).

[17] (1969) Assy. Int. No. 1061 (Mrs. Cook).

[18] *See* 2 Now Acts 14 (Winter-Spring 1969).

[19] New York State Council of Churches Leg. Release No. 8 (Feb. 10, 1969).

[20] American Civil Liberties Union Release (March 25, 1968).

[21] CAL. PENAL CODE § 274 (West Supp. 1968).

[22] Two actions were just filed in New York to have that state's abortion statutes declared unconstitutional. N.Y. Times, Oct. 8 1969, at 53, col. 1; *id.*, Oct. 1, 1969, at 55 col. 3.

[23] Oldham *Sex Discrimination and State Protective Laws*, 44 DENVER L. REV. 344, 375 (1967) (emphasis added). *But see* R. Seidenberg, *Our Outraged Remnant*, 6 PSYCHIATRIC OPINION, Oct. 1969, at 18:

> The exaggeration of the difference between the sexes has been used to justify misogyny. Our young people want to make it difficult to distinguish between the sexes to show that everything feminine is not contemptible. One can wear long hair proudly; to be taken for a woman is not something to despair. Make the sexes undifferentiated, and then, perhaps, the mythology of "feminine" and "masculine" will be revealed for what it really is—a ruse to keep women subjugated and to guarantee men an unearned superiority.

[24] CAL. LABOR CODE § 1350 (West Supp. 1968):

> No female shall be employed in any manufacturing, mechanical, or mercantile establishment or industry, laundry, . . . cleaning and dyeing establishment, hotel, public lodging house . . . in this state, more than eight hours during any one day of 24 hours or more than 48 hours in one week . . . .
>
> Females covered by the Fair Labor Standards Act, however, are exempt from the prohibitions of § 1350. *Id.* § 1350.5.

[25] CAL. ADMIN. CODE. tit. 8, § 11460 (1968). The division of public welfare is given specific enforcement power of § 1350. CAL LABOR CODE § 1356 (West Supp. 1968).

[26] 284 F. Supp. 950 (C.D. Cal) *vacated*, 393 U.S. 993 (1968).

[27] 293 F. Supp. 1219 (C.D. Cal. 1968).

[28] The typical restriction to 30 or 35 pounds is ironic if the goal is to preserve the femininity of women laborers; mothers commonly lift their children until they are 6 or 7 years old, when they weigh at least 70 pounds.

[29] Originally instituted because of substantial female employment during World War II, this practice continued even when the men returned to work. Bowe v. Colgate-Palmolive Co., 272 F. Supp. 332, 340 (S.D. Ind. 1967).

[30] 272 F. Supp. 332 (S.D. Ind. 1967). The provision was also challenged in Sellers v. Colgate-Palmolive Co., — F.2d — (7th Cir. 1969), which held in favor of the plaintiffs. The *Bowe* court did hold, however, that use of a seniority list segregated by sex, which resulted in certain female employees being laid off from employment while males with less plant seniority were retained, resulted in discrimination in violation of the 1964 Civil Rights Act. 272 F. Supp. at 359.

[31] 408 F.2d 228 (5th Cir. 1969).

[32] Rule 59, promulgated by Georgia Commissioner of Labor, pursuant to GA. CODE ANN. § 54-122(d) (1961): "[f]or women and minors, not over 30 pounds." A more flexible rule, setting no specific limitations, replaced Rule 59 in 1968. *See* 408 F.2d at 233.

[33] Civil Rights Act of 1964, § 704(b), 78 Stat. 257, 42 U.S.C. § 2000e-3(b) (1964):

> It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

[34] 31 Fed. Reg. 6414 (1966).

[35] The court pointed out that secretaries are obviously female, despite the presence in front of the bench of the male stenographer.

[36] 29 C.F.R. § 1604.4 (1969).

[37] American Newspaper Pub. Ass'n v. Alexander, 294 F. Supp. 1100 (D.D.C. 1968).

[38] 42 U.S.C. § 2000a (1964).

[39] DeCrow v. Hotel Syracuse Corp., 288 F. Supp. 530 (N.D.N.Y. 1968).

[40] *Id.* at 532 It is interesting to note that the court did not find the hotel's admitted discrimination offensive; this is in accord with public opinion. The *Syracuse Post-Standard* said in a lead editorial:

> The campaign waged for several months by the National Organization for Women (NOW) against Hotel Syracuse for its long-standing policy of refusing to serve drinks to unescorted women at the bar in the Rainbow Lounge has reached another absurd point.
>
> All sororities at Syracuse University have been asked to refuse to patronize Hotel Syracuse "because they discriminate against women at their bar," in a letter from Faith

A. Seidenberg, one of three directors of the Central New York Chapter of NOW.

Hotel Syracuse has had the no-escorted-women-at-the-bar rule ever since Prohibition was repealed in an effort "to maintain the dignity of the room" and to discourage undesirables and wouldbe pickups from frequenting the Rainbow Lounge, which is at street level, just off the main entrance to the hotel.

Hotel Syracuse should be commended for running a decent place, instead of being subjected to the repeated persecution of sit-ins and boycott efforts. Surely any women's rights group could find a better cause than this!

Syracuse Post-Standard, Nov. 8, 1968, at 12, col. 1.

[41] N.Y. CIV. RIGHTS LAW § 40-e (McKinney Supp. 1969).

[42] *E.g.*, Syracuse University at Syracuse, N.Y. Letter sent to parents of freshmen, January 1969 (freshman curfew); State University of New York at Oneonta, Experimental Women's Hours Policy, spring semester 1968 (freshman curfew).

[43] *E.g.*, N.Y. DOM. REL. LAW § 140(b) (McKinney 1964).

[44] State University of New York at Oneonta Experimental Women's Hours Policy (Rev. Sept. 1968).

[45] New York Trust Co. v. Riley, 24 Del. Ch. 354, 16 A. 2d 772 (1940). *But see* N.Y.DOM. REL. LAW § 61 (McKinney 1964).

[46] *E.g.*, CAL. CIV. CODE §§ 56, 82 (West Supp. 1968).

[47] *E.g., id.*

[48] United States v. Yazell, 382 U.S. 341, 361 (1966) (dissenting opinion).

[49] Burk v. Anderson, 232 Ind. 77, 81, 109 N.E.2d 407, 408 (1952) (dictum).

[50] Smith v. Nicholas Bldg. Co., 93 Ohio 101, 112 N.E. 204 (1915).

[51] *See* Moran v. Quality Alum. Casting Co., 34 Wis. 2d 542, 549–50 nn.15 & 16, 150 N.W. 2d 137, 140 nn.15 & 16 (1968); Simeone, *The Wife's Action for Loss of Consortium—Progress or No?*, 4 ST. LOUIS U.L.J. 424 (1957).

[52] 183 F.2d 811 (D.C. Cir. 1950).

[53] 274 F. Supp. 169 (N.D. Ill. 1967).

[54] *Id.* at 175. The court summarized the rationale of the prevailing rule:

The early status of women during the sixteenth and seventeenth centuries vitally affected the common law attitude toward relational marital interests. The wife was viewed for many purposes as a chatel of her husband, and he was entitled to her services in the eyes of the law. . . . The wife, however, as a "servant" was not entitled to sue for the loss of services of her husband, since in theory he provided none. *Id.* at 171.

[55] 260 F. Supp. 820 (W.D. Mich. 1966).

[56] "To draw such a distinction between a husband and wife is a classification which is unreasonable and impermissible." *Id.* at 822.

[57] Montgomery v. Stephan, 359 Mich. 33, 48–49, 101 N.W.2d 227, 234 (1960), *quoted with approval*, Millington v. Southeastern Elev. Co., 22 N.Y.2d 493, 503–04, 239 N.E.2d 897, 900, 293 N.Y.S.2d 305, 309 (1968).

[Telegram to Hon. BIRCH BAYH, Sept. 28, 1970]

CAMBRIDGE, MASS.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.:

The undersigned are members of the Harvard Law School faculty having considered the legal arguments against the equal rights amendment we urge you to vote in support of the amendment without change.

Derick Bell, Robert Braucher, Abram Chayes, Jerome Cohen, Vern Countryman, Alan Dershowitz, Philip Heymann, Charles Nesson, Samuel Thorne, Lawrence Tribe, Lloyd Weinreb.

[Legal memorandum to Hon. BIRCH BAYH]

To Senator BIRCH BAYH, U.S. Senate.
From Carol Sherman, Harvard Law School.
Re Precedents dealing with protective legislation and statutory classification: tendencies by the courts to either extend legislation to include the unprotected or adversely affected group or to invalidate the statute so as to strike it down completely.

Where a statute denies equal protection by making an unconstitutional classification, the classification can be abolished by making the statute operate either on everyone or on none.[1] The cases dealing with such legislation are, however, few. Protective legislation has not often been challenged, and in those cases where it has, the courts have made every attempt to find the classification reasonable and within the discretion of the legislature.

In treating this problem, Justice Harlan stated in his opinion in *Welsh* v. *U.S.* (1970),[2] "If an important congressional policy is to be perpetuated by recasting unconstitutional legislation, as the court has done here, the analytically sound approach is to accept responsibility for this decision. Its justification cannot be by resort to legislative intent, namely the presumed grant of power to the courts to decide whether it more nearly accords with Congress' wishes to eliminate its policy altogether or extend it in order to render what Congress plainly did intend." It is most likely that the courts will find themselves in this position at the passage of the proposed equal rights amendment.

CRIMINAL LAW

In the field of criminal law, the courts have been unwilling to extend legislation if a statute defining a crime is before the court. Such an extension to formerly untouched groups would make behavior criminal that had not been so before. However, the consequence of invalidation might be unacceptable if the legislation is necessary to an important public purpose.[3] Thus in those cases where different statutory sentences and procedures have been applied on an unreasonable, racial and/or sexual basis for the same substantive crimes, the courts have tended to invalidate the discriminatory statute as applied to the petitioner and have extended the alternative statute to the petitioning class:

U.S. ex rel. Robinson ve Janet York, Supt. Connecticut State Farm for Women 281 F. Supp. 8 (1968)—Petitioners made an equal protection argument saying that the Connecticut statute permitting adult women to be imprisoned for periods in excess of the maximum term applicable to men guilty of the same substantive crime was a violation of the Fourteenth Amendment.[4] The court, while noting the discretion allowed to the legislature in classification based upon sex, struck down the statue for being an invidious discrimination repugnant to the equal protection of the laws and extended to women the sentencing statute as applied to men. (*c.f. U.S. ex rel. Ada Sunrell v. Janet York*, 288 F. Supp. 956 (1968))

Comm. v. Daniel, 430 Pa. 642, 243 A2d 400 (1968)—The court struck down the Muncy Act, holding that it violated the equal protection clause of the Constitution. The Act stated that a judge sentencing a woman under the Act had no discretion in fixing the maximum period during which she must be imprisoned while a judge sentencing a man may consider extenuating facts and factors.

U.S. ex rel. Shuster v. Herold, 410 F2d 1071 (1969)—The court held that a law authorizing more lenient procedural measures for the involuntary commitment of an individual convicted of a crime to a mental institution than those followed for the involuntary commitment of a civilian was a denial of equal protection of the law. The court struck down the offending statute (c.f. *Baxstrom v. Herold*, 383 U.S. 107 (1966))

U.S. Reese, 92 U.S. 214 (1875)—The question presented was whether two election inspectors who denied a Negro the right to vote in a municipal election could be punished under a federal law which did not specifically permit such punishment. The law only provided for punishment for denying an individual the right to vote on a basis other than race. The court held the law unconstitutional in its entirety as not appropriate legislation under the Fifteenth Amendment rather than rewrite the law to include an offense based upon a racial discrimination. Although this case did not extend the law to include the excluded class, it can be distinguished from the cases above by the fact that there were not two opposing statutes in question.

In those cases, however, where classification held unconstitutional has been determined by other factors such as the nature of the crime itself, the courts may choose to invalidate the entire statute rather than to extend it to include the formerly excepted class:

Skinner v. *Oklahoma*, 316 U.S. 535 (1942)—The court held, in an opinion by Justice Douglas, that a statute calling for the sterilization of habitual criminals was in violation of equal protection of the laws.[5] The court discussed the unconstitutionality of the classification and the exception made. It then went on to say, "whether the severability clause would be so applied as to remove this particular constitutional objection is a question which may be more appropriately left for adjudication by the Oklahoma courts. . . . It is by no means clear whether, if an excision were made, this particular constitutional difficulty might be solved by enlarging on the one hand or contracting, on the other, the class of criminals who might be sterilized."

On remand, the state court held the entire act unconstitutional and declined to use the severability clause to remove the exception that created the condition of discrimination. (*Skinner* v. *Oklahoma*, 195 Okl. 106, 155 P. ad 715, (1948))

Those crimes, however, which involve classification and are sexual by their very nature (rape, statutory rape, prostitution, etc.) may be considered by the courts in relation to the public purpose to be served, the anatomical factors of the participants and the statutes presently operative that may affect or be affected by the acts in question.

EMPLOYMENT

The cases and statutes dealing with employment in equities may be divided into two categories. One includes those statutes, justified in protective terms, which prohibit women from entering particular vocations such as mining and bartending,[6] and those practices and statutes which either set a weight lifting limit or bar women from specific promotions and positions. Such practices and legislation can not be extended, to do so would fatally cripple or illegalize certain industries. Such legislation might, however, be recast to permit individual women as well as men to establish that they can perform the work without harmful effects:

Bowe v. Colgate-Palmolive Co., 416 F. 2d 711 (1969)—The court held that the limits on the weight an employee may lift must be applied on an individual basis to both men and women and not on the basis of sex. The court then said that where an employer was imposing a 35 pound weight-lifting limit on jobs open to females, he was acting in violation of Title VII of the Civil Rights Act.

Shpritzer v. Lang, 224 N.Y.S. 2d 165 (1962)—The court held that where a police-

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Footnotes at end of article.

woman could perform enough of the functions of command and administration which a male sergeant in the N.Y.C. police department performs, then the Administrative Code provision prohibiting promotion of a policewoman to the rank of sergeant must be unconstitutional on the ground that the statutory qualification on the basis of sex is arbitrary and capricious and the provision may violate the equal protection of the law.

In addition, the courts could require states to supplement statutes with others which would require employers to install labor saving machines where they are available.[7]

The other category of legislation, that affecting wage and hours limitation, would not have such drastic consequences. The extension of such legislation would merely increase labor costs; industry would still function. There would be a problem, however, to such an extension in that the legislature did not intend such protection for men and in fact might not have passed the legislation if it had thought that it would be applied to men. The courts have, however, already entered the area of wage and hour control. Thus through *Miller v. Oregon*, 208 U.S. 412 (1908), the Court upheld protective legislation as applied to women, and in *U.S. v. Darby*, 312 U.S. 100 (1940) it overruled *Lochner v. N.Y.*, 198 U.S. 45, (1905) and upheld legislatively imposed limits on hours and wages. Although the states did not react to *Darby v. U.S.* by extending previous women-only protection to men, it is not necessarily true that the state legislatures were opposed to such an extension. It is only very recently that the effects of such one-sided laws on women's employment opportunities have been brought to the attention of the states' political processes.[8] The extension of such protective legislation could, in many cases, be looked upon as a reasonable and legitimate remedy to statutes and practices held to be unconstitutional under an equal rights amendment.

The Department of Labor has issued the following interpretation of sec. 218 of the Federal Labor Standards Act and a provision of the Equal Pay Act of 1963: [9]

"State laws providing minimum wage requirements may affect the application of the equal pay provisions of the Fair Labor Standards Act. If a higher minimum wage than that required under the Act is applicable to a particular sex pursuant to State law, and the employer pays the higher State minimum wage to male or female employees, he must also pay the higher rate to employees of the opposite sex for equal work in order to comply with the equal pay provisions of the Act." [10]

Further:

"The application of the equal pay provisions of the Act may also be affected by State legal requirements with respect to overtime pay. If as a result of a State law, female employees in an employer's establishment are paid overtime premiums for hours worked in excess of a prescribed maximum in any workday or workweek, the employer must pay male employees performing equal work in such establishment the same overtime premiums when they work such excess hours, in order to comply with the equal pay provisions of the Fair Labor Standards Act." [11]

By extending protective legislation in the minimum wage area to men, an employer could no longer invoke the state maximum hour limit for women workers as a bona fide occupational qualification permitting him to discriminate arbitrarily against a female job applicant in favor of a male job applicant.[12]

In other fields involving classification, the courts have proceeded as follows:

JURY SERVICE

White v. *Crook* 251 F. Supp. 401 (1966)—The court held that a state may not exclude Negroes and women from jury service. It struck down the statue prohibiting women from jury service and also extended jury service to Negroes.

WELFARE

Shapiro v. *Thompson* 394 U.S. 618 (1968)—The Court held that the Pennsylvania, Connecticut and District of Columbia provisions denying welfare assistance to persons who were residents and met all the eligibility requirements except that they had not resided within the jurisdiction for at least a year immediately preceding application for assistance created a classification which was a denial of equal protection. The Court struck down the offending provision and extended welfare benefits to those previously excluded.

ACTION FOR LOSS OF CONSORTIUM

Owen v. *Illinois Baking Corp.*, 260 F. Supp. 820 (1966)—The federal district court in Michigan invalidated a discriminatory consortium rule which permitted a husband to sue while denying the wife access to the courts on the gronds that the rule was a denial of equal protection. The court, therefore, extended the right to sue to women. (c.f. *Clem* v. *Brown*, 3 Ohio Misc. 167, 207 N.E. 2d 398 (1965); *Black* v. *U.S.*, 263 F. Supp. 470, 480 (1967))

TAXING AND LICENSING

National Life Insurance Company v. *U.S.*, 277 U.S. 508 (1928)—The Court held that aspects of the tax law as applied to the gross income of insurance companies was unconstitutional. The Court left the question of severability to the states. Justice Brandeis said, in his dissent, "even if the clause permitted the act to enlarge the scope of deductions allowed by a taxing statute, the present case would be wholly inappropriate for the exercise of such power. Here the asserted unconstitutionality can be cured as readily by striking out the whole of the paragraph as by enlarging it." He went on to say that such legislation was not conferred in the Court.

Morey v. Doud, 354 U.S. 457, 77 S. Ct. 1344 (1957)—The Court held that a provision of the Illinois Commission of Currency and Exchange Act that called for the licensing, inspection, bonding and regulation of all currency exchanges engaging in the business of selling and issuing money orders but exempted the American Express Company from all of its provisions was a violation of the equal protection clause and therefore unconstitutional. The Court went on to say that the case need not be remitted to the Illinois court for a determination if the exception should be severed under the severability clause because the Supreme Court of Illinois had already indicated that the clause was not severable. (*McDougall v. Louder*, 389 Ill. 141, 151, 58 N.E. 2d 899, 904 (1945)—The Supreme Court of Illinois said "the General Assembly would not have passed the act if it thought that the companies (Western Union, Postal Telegraph, American Express) would be made subject to its rules and regulations. . . . There is no necessary reason for choosing the intent to exclude one group over the intent to include another. Courts may reason that without legislation none would be covered, and that invalidating the exemption therefore amounts to illegitimate judicial legislation over the remaining class not previously covered. The conclusion then is to invalidate the whole statute no matter how narrow the exemptions have been.")

Iowa-Des Moines National Bank v. Bennet, 284 U.S. 239 (1931)—The Court held that the state denied petitioners equal protection of the laws by taxing them more heavily than the competition. "The right involved is that to equal treatment and such treatment will be maintained if either their competitors' taxes are increased or theirs are reduced". The Court said that it was impractical to require the aggrieved party to assume the burden of seeking to increase the taxes of the others and that therefore he was entitled to recover for overpayment.

ILLEGITIMACY

Levy v. Louisiana, 391 U.S. 68 (1968)—The Court held that a statute which denied the right of recovery by illegitimate children in contrast to legitimate children for the wrongful death of their mother was an invidious discrimination contravening the Equal Protection Clause of the Fourteenth Amendment, since legitimacy or illegitimacy of birth has no relation to wrongs allegedly inflicted on the mother. The Court invalidated the legal classification and did not destroy the entire statute. It extended the right to recovery to the previously excluded class, (c.f. *Glona v. American Guaranty Liability Insurance Company*, 391 ULSL 73 (1968)).

The potential danger in constitutional challenge to laws conferring a benefit on one sex but withholding it from another has been that if the challenge succeeded, the benefit might be withdrawn. In the cases discussed above, it seems that the majority of the courts have extended the benefit to the previously excluded class. Under the authority of *Levy* v. *Louisiana*, it would appear to be consistent with the Supreme Court's role as a final interpreter of the equal protection clause for it to confer the same benefit upon the sex from which it had been previously withheld.[13] Those cases, however, where the courts seem to have been reluctant to support such an extension appear to involve clear legislative intent (*Morey* v. *Doud*) or practical necessity. It would seem therefore to be most beneficial to the enforcement of the equal rights amendment to include some kind of general statement of legislative intent in the specific fields most likely to be presented for adjudication. Thus a combination of a guideline to legislative intend and the cases previously discussed, such as *Levy* v. *Louisiana*, would make adjudication of cases brought under the equal rights amendment a clearer and more defined process and might point the way towards the extension of protective legislation.

FOOTNOTES

[1] *Skinner* v. *Oklahoma*, 316 U.S. 535, (1942).
[2] *Welsh* v. *U.S.*, June 15, 1970.
[3] Harvard L. R. 1136.
[4] The state based its argument on the premise that the statute was an expression of the state's concern to provide for "women and juveniles a special protection and every reformative and rehabilitative opportunity." The Court rejected the argument.
[5] Habitual criminals were defined as criminals convicted two or more times of felonies involving moral turpitude. Crimes of embezzlement were excepted. It was upon this exception that Justice Douglas based his argument.
[6] *Goesart* v. *Cleary*, 335 U.S. 464 (1948).
[7] Kanowitz, Leo, *Women and the Law*, Univ. of New Mexico Press, Albuquerque, 1969, p. 183.
[8] *ibid.*, p. 185.
[9] 29 U.S.C. sec. 206(d)(1) (1964).
[10] 29 C.F.R. sec. 800.161 (1967).
[11] 29 C.F.R. sec. 800.162.
[12] Kanowitz, p. 121.
[13] *ibid.*, p. 159.

Mr. BAYH. Mr. President, as one who has long been a strong supporter of this measure, I want the record to be very clear that I do not approve of some of the tactics and antics that have been followed by some enthusiastic supporters of this particular piece of legislation. In fact, I think the record will show that I am deeply concerned because some of these tactics and some of these acts perpetrated in the name of furthering the cause of equal opportunity for women

are really doing more damage than anything that has been said by the opponents of this particular legislation.

We are not, let me emphasize—nor would we do it had we the ability to—remaking women in men's image. God forbid. What we are trying to do is once and for all wipe away the vestiges of second-class treatment in education, in employment, in conducting business, and in the other facets of normal American life which, it cannot be denied, exist on the statute books, in employment policies, and in the hearts and minds of many of our citizens.

One hundred years ago this Nation wiped away the vestiges of second-class citizenship based on race. After this debate, I hope the Senate will join the House in ending such second-class citizenship based on sex. Every citizen, man and woman, black, brown, white, must be equal in the eyes of the law.

Mr. GRIFFIN. Mr. President, I ask unanimous consent to have printed in the RECORD some remarks prepared for delivery by the Senator from Texas (Mr. TOWER).

There being no objection, Senator TOWER's statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR TOWER

Mr. President, it is apparent that the values of the country are changing rapidly relating to the role of women in our culture. Women have gradually taken more and more of an active role in business, politics, and professional life, to the extent now that the traditional concept of women as purely homemakers has substantially disappeared, even though many women today actually remain, and often prefer to be, homemakers. The cultural differences between the roles of men and women have become much less pronounced in most fields of activity. Women today want full legal equality in education and employment to complete this peaceful cultural revolution leading to the greater utilization of their capabilities and energies. And who can blame them for wanting this expansion of their horizons? Certainly not the American male, who has constantly pushed back horizons in the search for greater fulfillment as economic provider and as molder of his own environment. He must understand that the same motivation and energy abides in women too, and that they long for an equal chance to express themselves in our accomplishment-oriented world.

Men should not feel that the passage of and ratification of this Constitutional Amendment would result in the loss of existing jobs. The result of this Amendment, with a favorable economic climate, should be no more than the gradual expansion of the job market, position-wise and salary-wise, to include most of the women who want to work and who want to improve their pay levels. This should result in an expanded economy and the expanded production of goods and services. It will probably result in an increase in per capita income for all employed persons due to the improvement in resource utilization.

It should be noted that the progress of the expansion of woman's role in our society does not depend on the passage of this Amendment to any great degree. What we have seen as a general progressive cultural change in women's role over the past fifty and even one hundred years will continue in the future, with or without this Amendment. The forces of cultural change—wider and better education, rapid and widespread communications, technological change, higher incomes—help push the emancipation of women and will insure that their improved positions in our economy will be accompanied by the appropriate cultural attitude changes in both male and female elements of the society needed to make this complete transition orderly and successful.

Passage of this Amendment would, therefore, really represent a symbol of accomplishment for the expanded role of women in our society more than an instrument of change itself. The cultural process that has made possible this expansion will continue to function, whether this legal recognition of equal status is passed and ratified immediately, or whether it takes some additional time to accomplish this task. In either case, women are in the final stages of transition to an assured cultural and legal equality. With this Amendment, we in Congress can give formal recognition to this accomplishment and perhaps help give women incentive to contribute more of themselves to participation in the economy and the society at large than they have ever had.

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.

STATUS OF HOUSE JOINT RESOLUTION 264 UNTIL CONCLUSION OF MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that House Joint Resolution 264 remain in a temporarily laid-aside status until the conclusion of morning business tomorrow.

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

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The PRESIDING OFFICER. The hour of 11:30 a.m. having arrived, the Chair lays before the Senate H.R. 18583, relating to the Public Health Service Act, which the clerk will state by title.

The legislative clerk read the bill (H.R. 18583) by title, as follows:

A 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.

The PRESIDING OFFICER. The pending amendment is No. 1026, offered by the Senator from Iowa (Mr. HUGHES) for the Senator from California (Mr. CRANSTON) et al.

PRIVILEGE OF THE FLOOR

Mr. HUGHES. Mr. President, I ask unanimous consent that two additional members of the staff, Mr. Richard Wise and Mr. Jay Cutler, be permitted to remain on the floor during the debate on H.R. 18583.

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

Mr. HUGHES. 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, to call up a privileged matter.

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

ESTABLISHMENT OF PLYMOUTH-PROVINCETOWN CELEBRATION COMMISSION

Mr. BYRD of West Virginia. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2916.

The PRESIDING OFFICER (Mr. EAGLETON) laid before the Senate the amendment of the House of Representatives to the bill (S. 2916) to establish the Plymouth-Provincetown Celebration Commission which was to strike out all after the enacting clause, and insert:

That, in recognition of the three hundred and fiftieth anniversary, in 1970, of the landing of the Pilgrims at Provincetown and Plymouth, which led to permanent settlements whose influence on our history, culture, law, and commerce extends through the present day, there is hereby established the Plymouth-Provincetown Celebration Commission (hereafter referred to as the "Commission"), for the purpose of developing suitable plans for such anniversary and conducting celebrations at appropriate times throughout the period beginning September 1, 1970, and ending November 30, 1971.

SEC. 2. (a) The Commission shall be composed of thirteen members as follows:

(1) four Members of the Senate, two from each of the two major political parties, to be appointed by the President pro tempore of the Senate;

(2) four Members of the House of Representatives, two from each of the two major political parties, to be appointed by the Speaker of the House of Representatives; and

(3) five members to be appointed by the President.

(b) The President shall, at the time of appointment, designate one of the members appointed by him to serve as Chairman.

(c) The members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

(d) Within ninety days after the termination of such celebration, the Commission shall furnish a report of its activities, including an accounting of funds received and expended, to the Congress. Upon submission of such report to the Congress, the Commission shall terminate.

SEC. 3. In order to carry out the purposes of this Act, the Commission is authorized—

(1) to appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(2) to obtain the services of experts and consultants, in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed $100 per diem;

(3) to accept and to utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(4) to solicit and to accept gifts of money or property;

(5) to procure supplies, services, and property, and to make contracts, without regard to the laws and procedures applicable to Federal agencies;

(6) to request the assistance and advice of, and to cooperate with, civic, historic, and patriotic bodies, institutions of learning, and State and local governments;

(7) to request the cooperation and assistance of such Federal departments and agencies as may be appropriate;

(8) to invite the participation of such other nations as may be appropriate, with the assistance and advice of the Department of State; and

(9) to make such expenditures as it may deem advisable from funds appropriated or received as gifts.

SEC. 4. Any property acquired by the Commission remaining upon termination of such celebration is the property of the United States and may be used by the Secretary of the Interior for purposes of the national park system, or may be disposed of as surplus property. The net revenue, after payment of Commission expenses, is the property of the United States and shall be deposited in the Treasury of the United States.

SEC. 5. There is hereby authorized to be appropriated the sum of $100,000 to carry out the purposes of this Act.

Mr. BYRD of West Virginia. Mr. President, this matter has been cleared on the other side of the aisle. I move that the Senate concur in the amendment of the House of Representatives.

The motion was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 3529) for the relief of Johnny Mason, Jr. (Johnny Trinidad Mason, Jr.), with an amendment in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills of the Senate, severally with amendments, in which it requested the concurrence of the Senate:

S. 368. An act to authorize the Secretary of the Interior to make disposition of geothermal steam and associated geothermal resources, and for other purposes;

S. 1461. An act to amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States; and

S. 2755. An act for the relief of Donal N. O'Callaghan.

The message further announced that the House having disagreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 14685) to amend the International Gravel Act of 1961, as amended, in order to improve the balance of payments by further promoting travel to the United States, and for other purposes, had agreed to the amendment of the Senate to the bill, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to a concurrent resolution (H. Con. Res. 768) directing the Clerk of the House of Representatives to make a correction in the enrollment of H.R. 15424, in which it requested the concurrence of the Senate.

MESSAGES FROM THE PRESIDENT

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

REPORT ON ACTIVITIES UNDER THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91-398)

The PRESIDING OFFICER (Mr. RIBICOFF) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Commerce:

To the Congress of the United States:

Pursuant to provisions of section 120 of the National Traffic and Motor Vehicle Safety Act, I am transmitting herewith for the information of the Congress the third annual report on the administration of the Act. The report covers activities under the Act from January 1 through December 31, 1969.

The report conveys the unavoidable fact that motor vehicle accidents continue to take a costly toll. There were 56,000 deaths and countless injuries in 1969. A small but hopeful trend, however, emerges from the statistics contained in the report: there continues to be a slowdown in the highway death rate, first observed in last year's report to you.

The report presents dramatic examples of survival from crashes which heretofore meant certain death—survival made possible through injury reduction features required by Federal standards for newly manufactured vehicles. The proven success of these features has persuaded the Department of Transportation to assign the highest priority to crash survivability in its programs administered under the National Traffic and Motor Vehicle Safety Act. Significant reductions in the casualty toll are anticipated from new crash survival features which are receiving intensive rule-making attention in 1970.

While much has been done in these safety programs, I am sure the Congress agrees that a greater commitment by every American will be required to rid our nation of the terrible cost of lives, injuries, and property damage caused by motor vehicle accidents.

RICHARD NIXON.

THE WHITE HOUSE, *October 7, 1970.*

REPORT ON ACTIVITIES UNDER THE HIGHWAY SAFETY ACT—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91-397)

The PRESIDING OFFICER (Mr. RIBICOFF) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Public Works:

To the Congress of the United States:

Pursuant to provisions in section 202 of the Highway Safety Act of 1966, I am transmitting herewith for examination by the Congress the third annual report on the administration of this Act. The report covers activity under the Act from January 1 through December 31, 1969.

The report conveys the unavoidable fact that highway crashes continue to take a costly toll: 56,000 deaths and countless injuries in 1969. A small but hopeful trend, however, emerges from the statistics contained in the report: there continues to be a slowdown in the highway death rate, first observed in last year's report to you.

Safety considerations in the design and construction of highways have played a major role in creating this trend. Equally important have been the efforts of each State to mount comprehensive safety programs. These programs cover a wide range of measures dealing, largely, with drinking behavior.

No program is more important than one seeking to control the problem of drunk driving, which accounts for half the nation's highway fatalities. For this reason, the report before you gives the highest priority to the control of drunk driving.

While much has been done in these safety programs, I am sure the Congress agrees that a greater commitment by every American will be required to rid our nation of this terrible cost in lives, injuries, and property damage.

RICHARD NIXON.

THE WHITE HOUSE, *October 7, 1970.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. RIBICOFF) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

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

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

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The Senate resumed the consideration of 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.

Mr. HUGHES. Mr. President, as I begin this morning on amendment No. 1026, I should like to state to the manager of the bill that I am ready to agree to a time limitation on discussion of this matter. A time limitation of 1 hour on each side would be perfectly suitable with me and agreeable with me, and I should like the RECORD to show very clearly that there is no effort on my part to delay bringing this matter to a vote. I am more than willing to vote, if we can agree to a time limitation.

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

Mr. HUGHES. I yield.

Mr. DODD. I should like an opportunity, before committing myself individually, to talk with the Senator from Nebraska (Mr. HRUSKA) and some others.

Mr. HUGHES. I can clearly understand that the Senator wants to discuss it with the ranking minority member of his committee and to have an opportunity to bring it up. After he has had that opportunity, I hope we can discuss it further.

Mr. DODD. Very well.

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

Mr. HUGHES. I yield.

Mr. BROOKE. I merely want to protect Senator HRUSKA's rights. It is the intention of the Senator to ask for a unanimous-consent agreement?

Mr. HUGHES. I do not intend to ask for it until the Senator from Connecticut has had an opportunity to talk with the Senator from Nebraska, which he has not had at this point. I just want the record to show clearly that I am ready to reach a time agreement and bring this matter to a vote, with 1 hour on each side, if we can get them to agree to it.

Mr. President, I would just like to touch on several points which came up during the initial debate upon my substitute amendment to H.R. 18583 last night. They are points which do not require extended debate. I think they are quite clear.

The Senator from Connecticut and the Senator from Nebraska have asked why we are bringing up the subject matter in this amendment at this late date. Mr. President, the subject matter is already before the Senate. The House already has put a title I, dealing with prevention and rehabilitation, in this bill. In fact, the title of the bill is so designated, as such a bill. So the subject matter is already before us. And now that it is before us, we are being asked to simply take the House version of this title and live with it, whether we like it or not. I, for one, feel that I have an obligation to do better than that. I am sure that the other members of the Labor and Public Welfare Committee, who are cosponsors of this amendment, feel the same—all of them. We are putting this amendment before this body after 18 months of careful study. We have held 23 days of hearings on the subject matter contained in the amendment—and we have held many more days of hearings on the subject of alcoholism, an area closely related to this one in the field of public health. That is the only connection I am making between alcohol and drugs at the moment. We unanimously reported the alcoholism bill, which was unanimously approved by this body, and this amendment is modeled after the bill which was passed by the Senate.

The Senator from Connecticut and the Senator from Nebraska have introduced a summary of objections to our substitute amendment, which has been provided to them by the administration. We heard from the Department of Justice and the Department of Health, Education, and Welfare in our hearings. The objections are not new to us. They were presented in our hearings. Mr. President, Congress has obligations of its own. A committee, like our own, has an obligation to study the matters before it and make its own recommendations—not to follow the company line, so to speak. This is too important a matter for that. We are carrying out our obligation.

President Nixon has stated:

> One of the great tragedies of the past decade has been that our schools, where our children should learn the wonder of life, have often been the places where they learn the living—and sometimes actual—death of drug abuse. There is no priority higher in this administration than to see that children—and the public—learn the facts about drugs in the right way and for the right purpose through education.

Last year, Mr. President, the Federal Government had $1,807,000 in its drug abuse information budget; it had $2,112,000 in its information budget for smoking and health information. We spent more on trying to convince Americans to stop smoking than we did to try to educate young people to distinguish among, and make intelligent decisions, about the drugs that move freely in their schools, that are advertised every evening on television, and that are often making tragedies of beautiful young lives. Obviously, I do not feel that we should be spending less on antismoking information—we should spend more on it. It is working. But proportionally, we should be spending far more on drug information than on smoking information. The figures do not indicate a high priority on education to me.

When the Federal Government had only $1,807,000 in its drug abuse information budget, when it is common knowledge that in every school in this Nation, on every college campus, in every high school, in every junior high school, and in many of the elementary schools—where every witness who testified before our subcommittee indicated that drug abuse education should begin, at 6, 7, and 8 years of age—certainly it is indicative that we are not spending even a pittance.

The statistics now indicate that there are between 12 and 20 million users of marihuana and experimenters therewith in this country; that there are other hundreds of thousands of heroin addicts and other hundreds of thousands of those using the amphetamines, the barbiturates, the uppers, the downers, the hallucinogens.

As a result of that, not only do we have the problem of meeting the current need in our educational programs and stopping the input into this drug scene, not only do we need to apprehend and shut off the sources and to do everything we can in this way, but also, we need somehow to get at the core causes and reasons, and prevent people from going into the experimenting and using of drugs in America.

By doing this, we can stop this massive input that the Senator from Connecticut mentioned last night. If I recall correctly, he referred to 12,000 heroin users in this country since the bill was debated in the Senate earlier this year. This indicates a tremendous input into this scene. It emphasizes the absolute necessity of preventive measures in this country.

This is precisely why it is imperative that we do the job correctly in the proposed legislation that is before the Senate today and that we not simply buy the company line. What has been done in the past is not enough. It is not a correct measure for the future, and it has not succeeded in stemming the input into the drug scene in America today or in the past.

Mr. President, let me give some examples:

In fiscal 1970, we spent $174 million on heart and lung disease. This is a high priority item.

One hundred and ninety-five million dollars on cancer. Another high priority item.

Three hundred and six million dollars on mental health—exclusive of drugs and alcoholism. Another very high priority item.

One hundred and four million dollars on allergy and infectious diseases. A very high priority item.

One hundred and forty-seven million dollars on neurological diseases and stroke. A very high priority item.

Mr. President, I am indicating this only to show that we not only need to be doing the things I have just enumerated—we need to do more in these areas—but that we need to do more in the area of drug abuse and drug dependence which has boomed into epidemic proportions in this Nation in recent years.

The Division of Narcotic Addiction and Drug Abuse within NIMH, where our major drug program is, spent only $48 million in 1970, according to HEW officials. Much of that money is only in indirect expenditures. For example, the departmental research expenditure used for fiscal 1970 is $16,263,000. But only $3,295,000 went to grants specifically for drug research. The rest had drugs only tangentially related or as a small component of the research.

So it is time we had a focus on this problem. It is time we put all of the authorities in one spot and had a central-

ized place of coordination and identity that the American people can look to as the place to which they may turn for direction, guidance, resources, and accurate information on prevention, treatment, and rehabilitation of those in the drug scene in America—something which is nonexistent today.

It is time we did this. It is time we had someone we can talk to who is totally responsible for this specific area. In short, it is time we had a congressional mandate for action in this area about which so many Americans are concerned. It is their children and our children that we are talking about here today.

Mr. President, there is no one in America who are parents of children at almost any age, 6 to 25, who are not concerned about their children in the public and the private schools of American today.

To say that we cannot and must not do these things in the proper fashion, when this bill is now before the Senate, is really to deny the emphasis that this country has been demanding in the past two years in many areas. People are almost in a state of panic, because they do not know what to do, and because there has been so much misguided and bad information given out to people—well-meaning people—but improper and incorrect information, causing the wrong emphasis and not reaching the people it should reach. It is absolutely essential to coordinate these matters in the government, in an intergovernmental coordinating agency, so that the average citizen of America will have the full benefit of them.

These things are basically what this amendment reaches out to do.

Mr. President, the problems in the pending bill which we are attempting to solve are not new. They have been thoroughly studied. This is a matter we must act on, which this body must consider with great deliberation. We must do everything we can to see that it is done properly.

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

The PRESIDING OFFICER. (Mr. ALLEN). The clerk will call the roll.

The assistant legislative 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 support the pending amendment to establish a comprehensive drug education, rehabilitation and research program in the Department of Health, Education, and Welfare.

I am privileged to serve on both the Judiciary Subcommittee on Juvenile Delinquency and the Labor and Public Welfare Subcommittee on Alcoholism and Narcotics. On the basis of my experience on both of these subcommittees which jointly are responsible for developing the Senate's programs on drug dependence and drug abuse, I am convinced that this amendment to title I of H.R. 18583 is critically important for a balanced bill and a comprehensive approach to the problem. That is why I have cosponsored the amendment. That is why I strongly urge its passage.

In seeking solutions we must avoid the mistake of thinking that drug abuse will disappear if we simply concentrate on revision in penalties and enforcement. We must probe the underlying factors which are driving people to drugs. And we must recognize that drug abuse is at least a four-dimensional problem—including law enforcement, prevention, rehabilitation, and research.

In this broader context, Mr. President, the administration's program and present proposal on drugs are a farce.

A year ago the administration sent up a drug bill which dealt almost wholly with penalties and enforcement. Initially they even favored stronger penalties across the board. Later they compromised to the present position of dropping minimum penalties and going after pushers and professionals rather than casual users.

But to date the administration has failed to submit a strong prevention and treatment bill. It has failed to endorse the approach of Senator HUGHES, myself and 22 other Senators who have sponsored S. 3562. It has failed to endorse the present amendment sponsored by all members of the Committee on Labor and Public Welfare. It has failed to devote more than passing rhetoric and minor adjustments to a comprehensive approach to drugs.

With its emphasis almost wholly on the law enforcement approach to drug abuse and drug addiction the administration demonstrates the same kind of tunnel vision which for years has held back development of lasting and effective solutions to the problems.

The total amount requested by the administration for HEW drug programs in fiscal 1971 is only $56 million. The total requested for community facilities is less than $10 million. Yet New York State alone has spent over $300 million in the last few years on its drug programs. And the $10 million requested would barely serve the 4,000 heroin addicts in Boston alone.

The Narcotics Addict Rehabilitation Act has been ignored, both by those in HEW who are responsible for providing the rehabilitation and medical facilities, and by those in the Department of Justice who are responsible for identifying and referring participants. Imaginative and forward looking prosecutorial policies could bring into the NARA program many persons who might benefit from it and be removed from the drug scene permanently in a healthy return to society. Those policies are lacking.

Programs under the Juvenile Delinquency Act—which should have been a key component in our war on drug abuse—have been almost totally neglected. The office was allowed to go for over a year without appointment of a director. It is in such bad shape that the administration requested only $15 million despite the fact that Congress authorized $75 million.

I support adequate enforcement. I support an all-out, full-scale effort to vigorously seek out and prosecute importers, illegal manufacturers, distributors and others who make a big business—and big profit—out of destroying the lives of others. We should pursue these drug traffickers relentlessly and throw the book at them when caught. We should seek to cut off the supply at the source.

However, for those who are users but not pushers—for our many young people today who have grown up in a drug culture and are experimenting with drugs—the emphasis should be prevention and rehabilitation, not simply throwing them in jail. We should not automatically burden these youngsters with the albatross of a criminal felony conviction to wear for the rest of their lives.

In terms of establishing a more rational set of penalties for the spectrum of offenses from mere possession to trafficking, titles II and III of the present bill are for the most part sound, in large part because of the excellent work of the Judiciary Committee in rewriting the penalty structure in the administration's original bill. They end mandatory minimum penalties. They lessen the penalties for simple possession of controlled substances, and make the crime a misdemeanor. They provide for striking the guilty conviction and giving a clean slate after a year's probation for first time offenders. They provide harsh penalties for continuing criminal enterprises, and for those who push drugs to minors.

Unfortunately, the bill as introduced by the administration has completely failed to follow through on the medical, educational, treatment, rehabilitation, and research aspects of the problem. And even though the House made some improvements, title I is still weak and inadequate—and the weakness of the title is all the more striking, and all the more tragic, when we consider how basically sound titles II and III are. This is an added reason for the Senate to follow through and add a first-rate, comprehensive, responsible substitute for title I.

The amendment offered by Senator HUGHES, myself and all members of the Committee on Labor and Public Welfare would establish a new National Institute for the Prevention and Treatment of Drug Abuse and Drug Dependence in the Department of Health, Education, and Welfare.

It would pull together the authority for a visible, high priority large-scale effort on drugs. It would authorize $190 million over the next 3 years—$55 million for formula grants to States for planning and development of State facilities, and $135 million for project grants to community-based programs, including "peer group assistance" programs.

The amendment would give the Institute comprehensive authority over prevention, education, training, treatment, rehabilitation, and nonenforcement-related research. It would at last establish one place in government to make sure that these programs are working, to make sure that they are utilized, to make sure that they are funded, to make sure that they coordinate with one another, to make sure that the Congress will is carried out.

Let me list just a few of the reasons why the amendment should be passed.

First, the amendment specifically provides for Federal aid to so-called peer group assistance programs. As the author of this provision in the amendment, I think its immediate passage is vital. It would provide aid for telephone hotline services; for store-front drop-in centers; for therapeutic, self-help programs run by ex-addicts such as Synanon in California, Daytop Village in New York City, and Marathon House in Rhode Island and Massachusetts; and for other programs primarily organized and operated by persons with the same social, cultural and age backgrounds as those of the persons served.

Communities throughout the United States are finding that peer group oriented activity is the most constructive in meeting the problems of youth. Young people trust other young people—those who have shared the common frustrations and the experience of growing up in the drug culture—much more than they trust established institutions. The company and encouragement of peers gives youngsters the strength to resist harmful drugs. The availability of a place to go and friends to talk with gives them an alternative to running away.

Mr. President, in my own State of Massachusetts, we have numerous community-based drug education, rehabilitation, and treatment centers. They have developed out of local concern. They are offering the comprehensive, community-oriented assistance which is necessary to reach the factors underlying the turn to drugs.

In Boston, Project Place is a drop-in center, a counseling service, and a 24-hour-a-day switchboard or "hotline." But because of inadequate resources it is overcrowded and often must turn runaways and youths back out into the streets after a few days.

The Martha Eliot Clinic, staffed by two ex-addicts, provides group therapy sessions and other outpatient rehabilitation. It cannot afford in-patient services.

Boston State Hospital has 20 beds for in-patient therapy and an extensive after-care program and out-patient treatment for about 200 a week. They too lack resources for adequate expansion.

Project First's halfway house is limited to a few beds, and its outpatient program is far short of meeting demand.

In the suburbs also, shortage of funds is curtailing a number of community-based programs. Project Concern in Winchester sends educational material to every resident, offers speakers to neighborhood groups, and has organized student-run education programs in the schools. But they still must refer youngsters who come to them for help to other rehabilitation programs.

Project Acid in Malden is a structured, therapeutic program and rehabilitative center—including a residential house, sensitivity sessions, and overall adolescent counseling in drugs and other problems. Marathon House in Attleboro offers a long term, residential, self-help program for addicts similar to Daytop Village and Synanon House. In each case, the directors must devote disproportionate time to seeking money—too often without success.

Young citizens in Newton are establishing a Freeport house for youths. Melrose a few months ago had a successful demonstration of a mobile van with material and young people discussing drug education. New Bedford is raising over $100,000 all on its own for a new program.

These are small operations, struggling to make ends meet. And they can never really do the job without vastly increased resources—at the local, State and Federal levels.

Just 2 weeks ago Lt. Salvi A. Pascucci, the head of the local police juvenile bureau in Framingham, Mass., expressed this need. In discussing the town's consideration of a drug education and rehabilitation center for the area, Lieutenant Pascucci said:

> We need this center badly and now. People don't know just how bad the problem is here, and in surrounding towns.
>
> My department gets calls every day from parents whose children are on drugs. They want help, but we have no means to help them.

And the lieutenant emphasized:

> Such a program must be away from the police and courts or the kids won't participate.

Mr. President, Massachusetts and other States desperately need help for peer group assistance programs. The amendment before us makes a start.

Second, by establishing a National Institute, the amendment would give the Federal fight against drugs the priority and prominence and urgency which it desperately merits. At present, despite the pressing urgency of the drug problem, we have no high level Federal agency or official with responsibility for the nonenforcement side of drug abuse control. The Institute would provide an effective mechanism for coordinating drug abuse activity. It would serve as a focal point to which concerned citizens and communities could turn for advice and assistance in developing local programs. In my visits to communities in Massachusetts, a major complaint is that activity and information about government programs on drugs are spread out in a bureaucratic maze. A National Institute would cut through the maze and reduce the confusion and overlap.

Third, the pending amendment offers a comprehensive approach to what is at least a four-dimensional problem. The institute would have responsibilities for administration, planning, research, training, education, collection and dissemination of information, and so on. It would make grants and coordinate activity for all aspects of drug education, prevention, treatment, rehabilitation and research.

Fourth, the amendment would at long last bring a new, up-to-date, responsive approach to drug abuse. Title I of the bill as passed by the House is simply more of the same—the same programs which have not worked in the past, and cannot work in the future. I say let us not futilely try to patch up the old; let us put drugs in a separate administrative agency which can take a broad, intensive, high-priority approach.

Fifth, the amendment incorporates the approach to education which has been approved overwhelmingly both by the House, and, to date, by the Senate Committee on Labor and Public Welfare. The House passed H.R. 14252, the Drug Abuse Education Act, by a vote of 204 to 0. On September 28, the Senate Committee on Labor and Public Welfare reported it unanimously. H.R. 14252 puts education in the hands of the Secretary, so he can draw on all elements of the Department for a comprehensive program. It includes training of professional personnel, preservice and inservice training programs, community education, peer group assistance, and a number of other aspects not covered in title I of the bill before us. The present amendment would take the approach so overwhelmingly approved by the House and the Senate Committee.

Mr. President, the whole matter of drug education is, of course, extremely important. Education takes place both in the schools, and outside of the school system. The Secretary should work on both aspects when it comes to the question of drugs.

As far as in-school activity, we should recognize that the Commissioner of Education has the background, experience, expertise, and methodology for working with State and local school districts. Any activity by the Secretary or by the Institute, therefore, should be very closely coordinated with the Commissioner.

If carried out in this fashion, the education program would carry forward the thrust of H.R. 14252. That excellent bill was proposed and carried forward in the House of Representatives by Congressman MEEDS of Washington. Congressman MEEDS showed a great deal of foresight as a leader on drug education, and the background in the development of H.R. 14252 should be a guide in carrying out its provisions as included in this amendment. In particular, in-school education should be the province, not of the National Institute of Mental Health, but of the Secretary and the new Institute on Drug Abuse generally.

As far as out-of-school activity, peer group assistance programs—such as telephone hotlines, drop-in centers, and therapeutic self-help communities are established as the primary approach under the amendment.

In the long run, we of course hope that schools will develop the capacity and ability to offer responsive drug education—education which will be credible and effective for our youngsters. I would expect, therefore, that the House and Senate Committees and Subcommittees with primary responsibility for education generally will follow this aspect of the Institute's activity very closely and offer appropriate changes when necessary.

Sixth, the amendment puts a higher priority on research than does the present title I—which merely expands the optional authority under the Public Health Service Act to do research on drugs, without adding funds or making research imperative.

On this question of research, Mr. President, I am pleased to note that in sec-

tion 502(d) of the bill now before us the Attorney General is given authority to grant immunity from State or Federal prosecution not only on his own motion, but also at the request of the Secretary of Health, Education, and Welfare. I think that this is extremely important to facilitate carrying out the forward-looking research which is absolutely essential to any lasting solution to the problem of drug abuse.

In many States, including my own State of Massachusetts, severe problems have arisen in situations where even after the Federal Government has given approval to a researcher's project—and in some cases even offered to provide him with the substance to be studied—there have been many months of delay in trying to secure immunity from criminal prosecution for posession of the substance which is illegal under State law.

Section 502(d) provides a means for the researcher to receive immunity promptly and without a great deal of redtape and bureaucratic difficulty. It is expected that the Attorney General would grant the immunity requested by the Secretary except in exceptional circumstances in which the Attorney General determines that granting immunity to the particular individual recommended by the Secretary would present a serious risk of illegal diversion of the controlled substance.

With regard to this close consultation and working relationship between the Secretary and the Attorney General, I also note that section 306(a) of the bill gives authority to the Attorney General to establish production quotas for controlled substances in schedules I and II in order to provide for the estimated medical, scientific, research, and industrial needs of the United States. The Secretary, with his background and expertise, should have significant input in determining the legitimate medical, scientific and related research, and industrial need for a scientific substance. The Attorney General, then, is expected to consult with the Secretary on this question—just as he consults with him on the question of scheduling substances in the first place—and give substantial weight to the Secretary's recommendations in his field of expertise.

Seventh, the amendment is almost exactly analogous to S. 3835, the bill on alcohol addiction and alcohol abuse which the Senate passed unanimously just two months ago. I believe we should be consistent. I believe we should give the same priority to drug abuse and drug dependence which we gave to alcoholism.

Eighth, the amendment presents the carefully considered and endorsed suggestions of the whole Committee on Labor and Public Welfare, which has jurisdiction over title I. The Subcommittee on Alcoholism and Narcotics had 28 days of hearings, including field hearings in Los Angeles, Denver, New York City, Cherry Hill, N.J., and Winchester and Lynn, Mass. This substitute amendment embodies the ideas of the Subcommittee which grew out of those hearings.

The Senate should not ignore the experience and expertise of the committee with jurisdiction and background on the subject. The committee's proposal can serve as a guide, just as it served as a guide on the alcoholism bill which the Senate passed.

Normally this House bill, H.R. 18583, would have been referred to the Committee on Labor and Public Welfare for consideration of title I. But because we are pressed at the end of the legislative session, the bill was held at the desk by agreement of both the Judiciary and the Labor and Public Welfare Committees. This is no excuse to be sloppy, however, or to do an incomplete job. Fortunately, we have the chance to receive the well-considered input of the Labor and Public Welfare Committee in the form of this substitute amendment.

Ninth, even a casual look at the House-passed bill suggests that the same thorough care was not given to education, rehabilitation, and research in title I as was given to enforcement in title II. Title I has four sections, covering nine pages. Title II has 51 sections covering over 110 pages. I certainly do not suggest that quantity is an indication of quality. But I do suggest that this wide disparity inevitably reflects a failure to revamp education, rehabilitation, and research in the same way that enforcement has been revamped. And I further suggest that the need for reform and revision is just as important and just as overdue in the former as it is in the latter.

The problem of drug abuse continues to grow at a staggering rate. And it threatens especially to destroy the minds and the lives of our young people. Every day in New York City an adolescent dies of a heroin overdose. Every day in Massachusetts and around the Nation youngsters in high school, junior high school, and even grade school are being offered a wide variety of drugs.

In many of our communities, over 50 percent of the youth 12 to 18 are experimental drug users. During hearings which I conducted in a Massachusetts high school last April, the president of the senior class testified that a student could get any drug except heroin by the end of the day right there in the high school. Heroin, he said, might take a day or two to obtain. He estimated that 50 to 60 percent of the students at the high school had smoked marihuana, and that perhaps half that number had tried other drugs such as "speed" and LSD.

With arrests doubling every year, the average age of the user in Boston had dropped from 27 to 21 in the last 5 years.

Mr. President, I have before me a telegram from Dr. Matthew Dumont, director of the Division of Drug Rehabilitation, Massachusetts Department of Mental Health. The telegram reads as follows:

Senator EDWARD M. KENNEDY,
Old Senate Office Building,
Washington, D.C.:

I have served as chief of the metropolitan center at the National Institute of Mental Health, and presently as director of the division of drug rehabilitation for Massachusetts. The most pressing and immediate need is a comprehensive Federal education, rehabilitation and research program along the lines suggested by Senator Hughes and you and many of your colleagues. Federal assistance is desperately needed for peer group assistance programs such as telephone hotlines, drop in centers, and self help residential facilities. Such programs have been extremely helpful in curbing drug abuse and drug dependence in communities throughout the United States. But these and other facilities are struggling for survival, many existing and potential programs will be destroyed without Federal aid. I urge the Senate to add a title to H.R. 18583 providing peer group assistance and the comprehensive education, rehabilitation and research proposed in Senator Hughes' and your amendment. Such an amendment would give a priority approach to drugs similar to the alcoholism bill which the Senate passed a few weeks ago. It would make the bill infinitely more balanced and responsive, and will help curtail drug abuse and drug dependence among our young people in all parts of the nation.

Dr. MATTHEW DUMONT,
Director, Division of Drug Rehabilitation, Massachusetts Department of Mental Health.

Mr. President, in conclusion I wish to say that I think the country is way ahead of Congress and the Senate in this field. There are several dozen community-sponsored programs in the Greater Boston area, initiated locally and supported from local funds. Unfortunately, up to this time they are poorly coordinated, and rarely interrelated, or interconnected. This springing up of local groups, which I mentioned in my statement—whether it is Project RAP in Beverly, Mass., or Project ACID that is so effective in Malden, or so forth—has occurred principally because the communities feel a strong and compelling need.

We should be able to provide some kind of assistance in communities to help and assist young people who are experimenting with drugs and whose lives have been tragically scarred by the use of drugs.

I find in my State of Massachusetts the need for some kind of help and assistance in rehabilitation, research, and education. This need is demonstrated by the support of local efforts in this area.

It seems amazing to me that we in the Senate, who are about to consider a comprehensive drug bill, would hesitate as long as we have when the committee headed by the Senator from Iowa (Mr. HUGHES) has made the kind of persuasive case it has and collected such an extraordinary amount of evidence and testimony from all over the length and breadth of this country in support of the amendment.

The need is desperate. The localities are crying for it.

The amendment fits in with the kind of program the President has said is worthy of support.

The only argument is, "Why should we bring this up now? We are going to delay the bill and we need more careful thought." I think this bill certainly has been delayed too far, and I think that a comprehensive approach to drugs has been delayed too far. We have a chance to get moving, a chance to act fully and responsibly by adopting this amendment which is so essential in terms of our country and the young people of our Nation.

Mr. President, we cannot wait to act

on a problem and a need of this magnitude. The time is here; the time is now. We owe it to the children of this generation—teenagers who even today may be popping multicolored pills, puffing on a "joint," or jabbing a dirty needle into their arms—to follow through on education, rehabilitation and research.

I hope that my colleagues will pass this substitute amendment by an overwhelming margin.

Mr. HUGHES. Mr. President, I thank the distinguished Senator from Massachusetts for his eloquent statement in regard to the great need in this country for this type legislation.

I wish to assure the Senator from Massachusetts that I thoroughly agree that this question is before this body. This section is already in the bill as it came from the House. We urge that the Senate perfect the bill with the substitute amendment, which is based on the many months of research and hearings we have held, I know that the Senator from Massachusetts has held hearings in his State and in Boston. Those hearings disclose to him a great need for this type of legislation in his State, I find the same thing in my State. To pass this bill without considering the amendment in this body would be irresponsible.

I thank the Senator for his contribution, his presence at the many hearings we have held across the country, and for his great service to the country in giving of his capabilities to bring about some legislation that will be a great improvement in meeting the need of this country.

Mr. KENNEDY. I thank the Senator from Iowa.

Mr. DOMINICK. Mr. President, for many months, I have been working on the Alcohol and Narcotics Subcommittee with the distinguished Senator from Iowa, the distinguished Senator from Massachusets, the distinguished Senator from New York, and other Senators. We have held hearings in many different areas of the country in connection with drug house and drug education.

We had one hearing in my State of Colorado. There, it became apparent that the denomination of "Crystal City" as applied to the city of Denver did not apply to our crystal clear air; it referred to the drug abuse that was going on in the entire metropolitan area of Denver. In Colorado, the problem is not restricted to Denver, but as that is where the hearings were held and most of the evidence came from that particular location.

Mr. President, it seems to me it is long past the time that we must come to grips with what is not only a national problem, but can be called a national disgrace. It is too early to tell whether this bill will be effective in being able to solve the basic problem of why people use drugs. But it seems to me that there is a responsibility for us to establish a program under the section, giving the possibility of both education and rehabilitation for those who are afflicted by the curse of drug abuse.

We are not dealing with the law enforcement aspects of drug abuse at all in the amendment. We are dealing with a program to provide funds by which the local communities will be able to provide help and rehabilitation for those people who have been overcome by drug abuse.

I fail to see why anyone would object to it. The only objection I have heard up to this time has been that passage of this amendment might slow up the bill in the conference with the House. Nor are we saying, "Turn all drug abusers loose." What we are saying is, "For heaven's sake, let us look rationally at the facts. We have a problem and let us give the victims the chance of being rehabilitated." The local communities, on their own funds, have been trying to do this throughout the country.

This is a terrible problem on the local level. Talking about drug abuse to a family and recommending that they should do something about their neighbors' children or their own children is like talking about tuberculosis in the old days. Nobody would talk about it, because they thought it was some kind of disease so horrible that it was not to be discussed. Drug abuse is a horrible problem. But unless we take steps to do something about helping those people who have been victims of drug abuse, we are not, in my opinion, exercising the leadership or responsibility which we should as Members of Congress.

I applaud the hard work which has been put in by the Senator from Iowa (Mr. HUGHES). I think he has conducted a series of hearings which have been very effective in producing evidence which shows clearly what the problems are. As I said, none of us are able at this point, as far as I know, to get at the basic problem, the question of why a person gets trapped in the drug syndrome. Among the younger people, it would appear that much of it is peer prestige and pressure, the desire to stay on a par with their in group who are going down the drug road.

We have had evidence, if it can be believed, that 10-year-olds are using syringes as a prestige symbol, injecting themselves with Kool-Aid, peanut butter oil, and ice water. "This needle-culture" has nothing to do with narcotic addiction, of course, but it does have something to do with giving young people infected arms, and hepatitis. And it obviously foreshadows what they may do as they go on to their older and teenage years.

We have had evidence of what is going on in all the school systems around this country. For example, one cannot go into any one of the District of Columbia schools here without finding the place rife with drug abuse. One can buy heroin, marihuana, or other drugs. As a matter of fact, we have had testimony before our Armed Services Committee indicating that families of military personnel in the Washington area wanted us to create a separate school at Bolling Air Force Base because their children go to District of Columbia schools and have to pay money to keep from getting beaten by the people who spread marihuana and other drugs.

Drug abuse is a national disgrace. Unless we face up to this problem now, unless we provide mechanisms so that the local communities in this country, whether they be in the District of Columbia, Colorado, or Alabama, the State which the present Presiding Officer, Mr. ALLEN, serves so ably, we are not living up to our responsibilities in this extremely important health area in this country.

Granted that the House has placed provisions in the bill for the community mental health centers. However, most of the addicts we have talked to, most of the police officers who have been involved in picking them up, and many of the users who are still on drugs, have said over and over and over again addicts are not going to go to a community mental health center, because it indicates they have some kind of mental problem and they are not going to admit it.

So there must be a whole variety of institutions and programs to be able to cope with a problem which is growing so fast. That is what the amendment, of which I am happy to be a cosponsor, provides. That is what we have been trying to do in developing this program for the last 20 months.

I fail to see why we should really have serious objections to it. The money involved is not big. We provide for formula grants and project grants. It is designed to have the States start a program which will bind together the State agencies, the local and community agencies, and the private ones operating in this field. Project grants are given for the special informal, peer-groups oriented facilities that are expert in treating people who have been overcome by drug addiction.

It seems obvious to me, when we see the havoc that has been wrought among our younger people, whether they be taking barbiturates, amphetamines, LSD, or heroin, that although we have an obvious need to try to do something to control the distribution of these products and punish those who are selling them, we also have an obligation to try to give to the persons who have become victims as users a chance to get back into the mainstream of society. That is what I feel the amendment will do.

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

Mr. DOMINICK. I am happy to yield.

Mr. HUGHES. I want to thank the distinguished Senator from Colorado because, in all the time since the subcommittee has been created, the Senator from Colorado has attended every hearing around the country and every one in Washington.

As the Senator has disclosed in his statement here this morning, he has a great awareness and insight into the problems relating to education, rehabilitation, public health, and the use of narcotics and drugs in our country. He has a great and compassionate concern for doing something about it.

I listened with care to his statement about the need to bring the amendment up. The provision is already before the body. The section is already in the bill. If there is a fear of delaying this bill in the conference committee, I cannot see the danger.

I think this is a matter which must be

considered. This amendment should be adopted. I think the some 20 months of hearings and thousands of pages of testimony we have taken indicate that. We would be derelict in our duty, after having served on the committee, if we did not insist upon it.

Mr. DOMINICK. I appreciate the kind comments of the Senator from Iowa. I feel this is not a partisan matter as between the parties whatsoever. I. is a national problem that affects everybody, regardless of his political affiliation.

As far as the conference is concerned, I could see that if we were going to adjourn by Saturday, that would be a problem, but, as I understand it, we are going to recess until November. So even if the conference could not come to us with its report by next Wednesday, certainly the matter could go on again in November and we could resolve whatever differences there are in that period.

I really feel quite strongly about this measure. I have been called by a number of people, asking if I had strong feelings on it. I told them I was deeply committed to it. I do not think one could sit through the hearings we have had all over the country without feeling the need for this program.

Mr. HUGHES. I appreciate the comments of the Senator from Colorado about this being a nonpartisan matter. Certainly there is nothing partisan about dealing with this problem of drug abuse and drug dependence. It is our wish, on both sides, to support the best procedures we can get to meet this problem, and support them fully. It is also our intention to bring to the Senate the best measures on rehabilitation and health that we can. There has never been any partisanship on this issue during the months that the committee has been in existence.

I once again wish to express to the Senator from Colorado my appreciation. I am sure he shares my willingness to agree to a time limitation on debate, so that we can get the matter voted on and get about our business, and get to the conference, if we are to have it. I assume the Senator from Colorado would agree with that statement.

Mr. DOMINICK. I would have no problem on that at all.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. HUGHES. The Senator from Colorado has the floor.

Mr. DOMINICK. I yield to the Senator from North Carolina.

Mr. ERVIN. As I interpret the objective of the amendment offered by the Senator from Iowa, it is that the best way, and the most satisfactory way, ultimately, to produce results in respect to drug addiction, particularly among young people, is to treat it as a problem which requires psychiatric and other therapeutic treatment, rather than to treat it strictly as a criminal problem; is that correct?

Mr. HUGHES. That is our belief and intent; yes.

Mr. ERVIN. I would like to say to the distinguished Senator from Iowa that that embodies the concept I have on this problem, and it will be a pleasure to vote for the amendment offered by the distinguished Senator from Iowa.

Mr. HUGHES. I thank the Senator.

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

Mr. ERVIN. I yield.

Mr. HRUSKA. Has the Senator from North Carolina taken into account the considerations that form the basis for the report of the House of Representatives and the action there, that there are aspects of this amendment by way of a substitute which actually impair and downgrade the ability of law enforcement efforts against the illegal use and the deviation of supplies of drugs?

There is no quarrel with the merit of the approach that the substitute has taken. There is no quarrel with that at all. This matter was plowed; it was considered thoroughly in January of this year. There were offers made to the Senator from Iowa that we would support him in this kind of approach for prevention.

Mr. HUGHES. Mr. President, will the Senator yield? This is the approach.

Mr. HRUSKA. For rehabilitation, for education, and for all those things. We will do it. But not at the expense of impairing the law enforcement measure which we are considering today. It is basically a law enforcement measure that we are now considering.

There is nothing in the amendment that is not already provided for and authorized by the present statutes, as supplemented and amended by title I as it appears in the bill, with funds authorized for those purposes. But there are provisions in the amendment proposed by the Senator from Iowa which will impair the ability of the Department of Justice to treat with manufacturers who are not selling properly or clinics which are not distributing properly, and other phases of law enforcement.

That is what is involved here. The House of Representatives has carefully considered this matter. They say the same thing. They say:

> We will go into that matter, but not in connection with a law enforcement measure.

The Senate debated the issue in January, taking 4 days to do it, and decided that the two problems are separable, and that in fact they cannot be considered together because of the impingement upon law enforcement proceedings which will be found in the substitute proposal of the Senator from Iowa.

In yesterday's discussion of the matter, I outlined some of those objections. I propose to go into them again today.

It is nice to talk about rehabilitation, and I am for it, Mr. President. No one can be against it. It is nice to talk about education, and publicity, and prevention, and research. It is good to do that. But not at the expense of impairing our ability to deal with the pusher, the dishonest manufacturer, the importer, and all those other matters; and that would be the effect of this substitute, as I shall explain in detail, line by line, Mr. President, and word by word.

That is what is involved here. We are not against these things that are in the substitute bill. But this is the wrong place, and the price which would be paid is much too great.

Furthermore, this is a matter of urgency. If this amendment is adopted, it will force a conference. That has already been plainly indicated. We will not get at it until November or December. Legislatures are going to meet in January of 1971. They need the prompt enactment of a bill which will lay a foundation for the consideration and, hopefully, the passage of the model uniform bill which is built upon the type of bill that we have here, for law enforcement purposes.

Mr. HUGHES. Mr. President, could I make a parliamentary inquiry?

The PRESIDING OFFICER. If the Senator will yield for that purpose.

Mr. HUGHES. Who has the floor, Mr. President?

The PRESIDING OFFICER. The Senator from North Carolina had the floor, and yielded to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, if the Senator from Iowa wants to have the floor, he is surely welcome to it. I will yield the floor, if he objects to my explaining some of these things which I undertook to ask about in connection with the statement of the Senator from North Carolina. But if he objects to my statement that there will be objections to his amendment, I shall defer my remarks until a future occasion.

Mr. HUGHES. The Senator from Nebraska knows very well that the Senator from Iowa does not object to his replying to any statement by anyone.

Mr. HRUSKA. The Senator interrupted my statement.

Mr. HUGHES. I understood that any Senator has the right to make a parliamentary inquiry as to who has the floor. I thought I had it.

Mr. HRUSKA. I see.

Mr. HUGHES. And if so, I wanted to respond to certain of the Senator's statements as he went along.

Mr. HRUSKA. Very well. Let me conclude briefly, then, and then the Senator can proceed as he chooses.

As I have stated, this bill must be enacted soon in order to do any good in assisting law enforcement—in the neighborhood, on the campus, in the high schools, and in the grade schools. The longer it is delayed, the less the likelihood that there will be any action by State legislatures based upon it. That is what we are facing, Mr. President.

Mr. ERVIN. Mr. President, if I may interject myself at this point, I disclaim any right to the floor, because there was a colloquy going on between the distinguished Senator from Iowa and the distinguished Senator from Colorado, and I interjected myself into it with the request that I might ask the distinguished Senator from Iowa a question. I did not obtain the floor in my own right, but by suffrance.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from Colorado is no longer in the Chamber, so he does not have the floor. The Senator from North Carolina has disclaimed the right to the floor. The Senator from Nebraska has taken his seat, and the Senator from Iowa is on his feet; so the Chair recognizes the Senator from Iowa.

Mr. HUGHES. Mr. President, I submit that the Senator from Nebraska is mistaken in the statements he has made

to this body, and I shall listen with interest to his further explanation on the points he has brought out here.

Everyone, as he has indicated, favors rehabilitation, education, and prevention. We are all for it.

We are all for law enforcement, too. We have proved that in this body by the fact that there was not a single vote against the original bill that came out of the subcommittee of the Senator from Connecticut, that I can recall, which certainly is evidence that there is no one against law enforcement, nor any intention to interfere with it.

And this is certainly the place to bring it up, since there is a title already in the bill in the field of education, health, prevention, and rehabilitation—the very points that we are speaking to. It is time to debate the issue, and to do it properly and thoroughly.

Mr. President, since all the principals are on the floor, I should like to make a unanimous-consent request for a time limitation on debate on this particular amendment. I am willing to agree to a time limitation of my amendment, if the proponents of the bill are willing to agree to it. As I have already submitted twice, I submit again that almost any agreement on time limitation is agreeable to me, up to an hour on each side.

The PRESIDING OFFICER. Does the Senator make a specific request for unanimous consent?

Mr. HUGHES. Yes.

The PRESIDING OFFICER. What is the request?

Mr. HUGHES. I ask unanimous consent that there be a time limitation of 1 hour on each side on Amendment No. 1026.

The PRESIDING OFFICER. Is there objection?

Mr. HRUSKA. Reserving the right to object, Mr. President, we face this situation in the matter of a limitation of debate. A little canvass has been conducted as to the attendance in Washington of various Members of this body. There are a considerable number of absentees on both sides. There has not been any consideration of this subject to acquaint the Members of this body, busy as they are in the closing days of this session, to refresh their minds on the arguments that were laid out here last January—January 23 to January 28—involving the same issues; and it resulted in a rejection of the approach that is now renewed by the Senator from Iowa. We have not had the time to communicate with them.

It would ill become this body to take the substance of a bill that had once been rejected by it and that has not had the proper processing and to do that under the limitation that is proposed. It is not practical. Everyone knows the effect of a limitation on debate. There is disappearance from the precincts here to reconvene and reassemble here at the hour of vote and voting.

The stakes are so high in this matter that we need expeditious enactment of this measure. We will not get it by adopting the substitute amendment for title 1. We will bar the country from getting it by traveling that route. I think that can be demonstrated—and in fact it is demonstrated—by the attitude of the other body, which has taken that viewpoint, and they will stand adamant. They have so indicated.

I say in all good conscience, as we said last January, that there are two problems. Let us not try to merger here of the two problems in such a way that will impair both of them. Later I will go into the matters one by one.

Because of this, I am constrained to suggest that any request for a limitation of time not be made at this time. If the Senator from Iowa persists in making the request, I should like to hear from him at this time.

Mr. HUGHES. Mr. President, I want to make it perfectly clear that the Senator from Iowa is not delaying a vote on this amendment. I believe that is perfectly clear. I withdraw my request for a time limitation on the amendment.

I again state that I am ready to reach an agreement on time limitation at any time the Senator from Connecticut and the Senator from Nebraska are ready to so agree. I would be more than willing to resubmit the request to the leadership at that point.

The PRESIDING OFFICER. The request is withdrawn.

Mr. HUGHES. Mr. President, in reply to the distinguished Senator from Nebraska, I must state that the subject matter in this amendment is already in this bill. It is already before this body. It is not an injection of something new into the debate. The continuous repetition and drumbeat of the fact that we are taking on a subject that has not been brought up, to imply that this is a hasty action, after we have held many days of hearings, is simply an indication of a total misunderstanding of what has gone into this amendment. This is the very subject matter that I understood the Senator from Nebraska and the Senator from Connecticut to indicate last January that they would support after hearings were held and due consideration given. That is now the matter before the Senate.

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

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

PRIVILEGE OF THE FLOOR DURING CONSIDERATION OF DRUG CONTROL AND CRIMINAL LAW BILLS

Mr. HRUSKA. Mr. President, I ask unanimous consent that during the consideration of the drug control and the criminal laws bills, members of the staff of the Committee on the Judiciary have the privilege of the floor.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, under the rules there is an automatic number of four on each committee staff——

The PRESIDING OFFICER. Four from the committee staff and two from the Senator's personal staff.

Mr. BYRD of West Virginia. How many additional members does the Senator desire?

Mr. HRUSKA. Mr. President, this problem recurs each time we get into a major measure. We have 40 staff members on the Judiciary Committee. I have been barred from getting my member of the Judiciary Committee expert in this field on the floor because the quota has been used up. I do not know how else to put this unanimous-consent request; but obviously, when the quota is used up, this Senator is deprived of the assistance he needs in this very complicated piece of legislation.

If the Senator from West Virginia, the acting majority leader, has some other method to approach this matter in a practical and yet limiting way, I will be happy to entertain it.

Mr. BYRD of West Virginia. The Senator from West Virginia does not want to place an obstacle in the way of the distinguished Senator. The Senator from West Virginia does not know, in the first place, how many members are on the Judiciary Committee staff. Just to make it a wide-open consent here, I would prefer that we not do that; but if the Senator could indicate by way of identification of the persons, or at least a number—three, four, or whatever he wishes—I would have no objection.

Mr. HRUSKA. I limit my unanimous-consent request at this time, then, to the person of Malcolm Hawk of the subcommittee staff.

The Senator from Connecticut might have some additional thoughts on that.

Mr. DODD. I did not hear the statement of the Senator from Nebraska.

Mr. HRUSKA. I asked unanimous consent that members of the staff of the Judiciary Committee have the privilege of the floor during the consideration of this bill and the crime control bill. The suggestion has been made that we have it limited by naming the person, but the quota has been filled, and this Senator and other Senators similarly situated are completely immobilized.

Mr. BYRD of West Virginia. The Senator should have some assistance from staff members, and it is not this to which I object. If there are 25 members on the Judiciary Committee staff, I would not want to agree to a unanimous-consent request that all 25 may be on the floor at one time. I do not want to object to the Senator having one, two, or three assistants.

Mr. HRUSKA. I recognize the practical difficulty. This form of unanimous-consent request was suggested to me by another official of the Senate. I will put it in that fashion. I will withdraw it in favor of the unanimous-consent request that Mr. Malcolm Hawk of the Judiciary Committee staff be allowed the privilege of the floor during the consideration of this bill and the criminal laws bill.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD of West Virginia. I have no objection.

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

Mr. DODD. Mr. President, I ask unanimous consent that Mr. Eugene W.

Gleason of the Judiciary Subcommittee staff have the privilege of the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

What is the pleasure of the Senate?

Mr. HRUSKA. 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 (Mr. RIBICOFF). Without objection, it is so ordered.

LEGISLATIVE REORGANIZATION ACT OF 1970

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that H.R. 17654, the Legislative Reorganization Act of 1970, be printed as it passed the Senate on yesterday.

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

ORDER FOR ADJOURNMENT FROM FRIDAY TO MONDAY, OCTOBER 12, 1970

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business on Friday next, it stand in adjournment until 10 o'clock Monday morning next.

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

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The Senate continued with the consideration of 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.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. GRIFFIN. 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.

Mr. BYRD of West Virginia. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is on amendment No. 1026.

Mr. BYRD of West Virginia. Mr. President, I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. HRUSKA. Mr. President, we are considering today a total recasting of the pending bill by the proposal that title I be stricken in its entirety and a substitute title I be adopted.

The substitute amendment is really, in essence, a measure which would go very extensively into the field of rehabilitation, education, prevention, and matters of that kind.

The pending bill is one which is based upon law enforcement procedures. It is a very complicated bill, one upon which much effort has been given. It updates the field of law enforcement and drug abuse and the illicit sale or importation of drugs and dangerous substances.

The two subjects of these separate pieces of legislation do not mix. They should not be incorporated into a single bill—especially without coordination from the very beginning.

The bill revises laws which are based upon the Harrison Narcotics Act, adopted some 60 years ago. It is thought that this is a good bill. I believe that it is. It is scientific. It has the flexibility necessary to deal with the matter. But it has zeroed in on the field of law enforcement. Now comes a substitute amendment and it seeks to add to the bill many extraneous matters not related to the other titles. Its impact would be to impair many of the law enforcement features contained in title II of the bill.

We know these things. We know that the Department of Justice and the Department of Health, Education, and Welfare are opposed to the substitute amendment.

The Senate originally considered this issue in January of this year. From January 23 until January 28, the bulk of the debate in this Chamber was about this subject matter. At that time it was decided that, as meritorious, as urgent, and as fine as the contents of the substitute amendment are, this is not the place to put them into the form of legislation.

The other body considered this amendment and they rejected it the same as the Senate rejected it.

We have a repetition now of the request that we go through that whole procedure once again. I strongly urge that we do not.

Mr. President, there is great conflict and contradiction between the terms of the substitute and title II of the bill, bearing in mind that the bill is a law enforcement measure, and bearing in mind again that the Senate has already decided that the law enforcement measure and the rehabilitation measure should have been considered separately.

Adoption of the amendment, Mr. President—and these words should be marked well—will result in a heavily detrimental impact upon the law enforcement sections of this much-needed measure.

Urgency is of considerable value here for a number of reasons. This bill was first sent up by the administration in July 1969. It was acted on by the Senate in January of this year. Long ago it should have been enacted into law so that we could get down to the business of dealing with this cancer that is growing and growing within the Republic. So that we could get at the drug traffickers who prey on our innocent citizens.

There has been a lot of talk about it. There has been a lot of rhetoric about it. But there has not been any action.

The academic year started a month ago. This bill should have been enacted at that time for psychological purposes if nothing else, to serve notice on the academic communities, the high schools, and even the grade schools that there is now a basis whereby not only the Federal Government but also the State governments will be able to get into this matter of policing the actual users as well as the purveyors of these dangerous drugs, dangerous substances, and narcotics and their derivatives. That has not been done.

Another reason why delay would be so harmful is that a model bill for enactment by State legislatures has been prepared and is awaiting State action. It is based upon the enactment into Federal legislation of the pending bill in a form that will not bear radical or fundamental changes from the form in which it was adopted in the other body.

To adopt this substitute will mean that the bill will necessarily go into conference. That is not a fatal procedure normally. It may not be fatal now. However, it will be heavily expensive.

We will not go into conference nor will we get this finished before the latter part of November. By the very nature of things, we will not do it. It would not be too far from accurate to say that this bill could not under any circumstances be enacted before the first part of December. It takes some doing to promulgate these measures to the several legislatures of the Union that will be meeting next January.

It takes some doing to implement it and to get at the proper regulations and explanation. That information would be going out tardily to the legislatures. Many of the legislatures are limited in the amount of time that they have for the purpose of transacting their business for the year. It will mean, therefore, that in many instances the States will not be able to enact this model law which is so important to get at the field operations of pushers, users, as well as importers and manufacturers, which will fall within the purview of this legislation.

There is another matter. The Bureau of Narcotics and Dangerous Drugs has in this bill the authorization for its increased appropriation. That is very important because without the money they are entitled to have and should have they will be impaired in their functioning and a delay will be very serious, indeed, in that field, as well. Speedy action would enable the Appropriations Committee to consider this request now.

The amendment provides for a number of things. It provides for many provisions in regard to drug prevention, treatment, education, rehabilitation, and so forth. This fact, however, cannot be controverted: There is ample statutory authority now existing, and it is supplemented by title I as approved by the other body, to enable progress to be made in all of these activities without the substitute being adopted. Not only that but there is ample funding contained in title I, as adopted by the other body.

So we have here a measure which will

be very, very difficult to countenance because of all these facts.

In what ways will this amendment impinge upon title II of the pending bill? In what way will real harm be done? We can be specific about it. The Department of Justice felt certain portions of the amendment conflicted with the language of title II. It was the considered judgment of representatives of the Department of Justice that that was true.

There are certain new provisions of the amendment that are objectionable. For example, in the congressional findings of the amendment that "drug dependence is an illness or disease," there is found great fault. That legislative finding in a bill geared to law enforcement raises the specter that the allegation of drug dependence could be asserted as an affirmative defense in any criminal prosecution. This is contrary to our existing Federal law; yet the adoption of this amendment would have that effect. That is why the law enforcers of this Nation are heavily concerned with that part of the substitute amendment, and other parts, as well.

The word "classification" in subsection 112(k) of the amendment, defining the term "prevention and treatment," gives implied authority to the Secretary of Health, Education, and Welfare to classify controlled substances for rehabilitation and treatment purposes in a manner similar to that provided for in section 309 of S. 3562, which is contained in the counterpart, in the House-approved bill.

The Department would object to any additional drug classification as being necessary in light of the classification scheme contained in title II of H.R. 18583.

To confer upon the Department of Health, Education, and Welfare that authority for classification would mean there would be a duplication of that activity. It would create conflicts and confusion.

If we are to have any sense in a law-enforcement program there must be only a single source of classification. Otherwise, one finding will nullify the other. It will confuse the investigative people and the prosecutors and in general visit much harm upon the entire program.

Further possible conflicts may arise between the statistical functions of the Secretary of Health, Education, and Welfare set out in section 125 of the amendment and the statistical functions of the Department of Justice contained in subsection 503(a)(4) of title II. On the one hand, statistics gathered by public agencies pursuant to regulations promulgated under section 125 may not reveal the identity of drug-dependent persons. On the other hand, subsection 503(a)(4) authorizes the Department of Justice to catalog information and statistics, including records of controlled substance abusers and offenders, and make such information available for Federal, State, and local law-enforcement purposes. Making records of controlled substance abusers available for enforcement purposes obviously necessitates revealing their identities.

For police purposes, control purposes, and law enforcement, names and addresses are needed; in fact, they are indispensable. Without the names, how can anyone be indicted? Without the names, how can anyone be charged with violation of the laws relating to the distribution, the importation, or manufacture of drugs? The law enforcement agency needs the capacity and must have it to get names and addresses in order to trace the source of the drug, and if that source is dispensing those drugs illegally and improperly, there will be proper prosecution. Without those names and the ability to get information and witnesses it cannot be done.

We have to make up our minds. Are we going to have a law enforcement measure in this field or not? If we do not want it and if by the adoption of this amendment we find many of the provisions for law enforcement are nullified and held for naught, we will have to bear the consequences and we will have to go forth to the public and say, "We have such a meausre here for strict enforcement, but we nullified it because we paid undue and untimely consideration to rehabilitation, education, and preventive measures."

Mr. President, there is room for both of them, but they must not conflict with each other, as this measure would do. The immediate need now is for a strict and very effective law enforcement program. Once we have this bill we can proceed to the orderly consideration of this additional proposal.

There is further objection to the provisions of subsection 126(a)(6) of the amendment. This requires all Federal agencies to submit to the Department of Health, Education, and Welfare all unpublished data pertinent to toxicology, pharmacology, and epidemiology of drug abuse and the dangers to public health posed by controlled substances.

All such information under the terms of this section is to be made widely available. This provision is much too broad and will require Federal agencies to submit information for publication which is not intended for public consumption. The Department of Justice, for example, would be required to submit all data pertaining to a drug which is being considered for control, long before a determination is made to initiate control proceedings.

The intent in the amendment is for rehabilitation, education, and research for the purpose of publication and promulgation, but a byproduct arises out of that provision which is very objectionable.

Again we get into the matter of adversary proceeding. Here is a file compiled to make a case against an importer or to make a case against an illegal distribution by a manufacturer or one of its agencies, and that information would have to be published in advance, and it would completely confound and make ineffective the law enforcement procedures.

Disclosure prematurely would enable the manufacturer or the one who is suspected of improper conduct in the distribution, sale, or importation of drugs, to alter or even terminate the practices in which he has engaged, to re-establish them somewhere else under some other circumstances, with different people doing it; and the processes of law enforcement would be frustrated. Such disclosure would also terminate the decision-making process with regard to control on the part of the Department of Justice before it even gets started.

This could be done in a number of ways, because their raw files would have to be widely available. Imagine the impasse that would occur if the raw files of a law enforcement agency had to be opened for the disclosure of that information. The files will contain names of witnesses. It will enable the manufacturer or distributor to contact witnesses who have given the case history and persuade them, if possible, to change or withhold their stories or to do other things which would be at variance with a proper investigation of the subject at hand.

It would enable such a person to write and publish articles in journals that are purported arguments for their production and, in an untimely fashion, make a case for public opinion, one way or the other, before the necessary information is procured by the law enforcement agency. There could even be efforts to work an influence, directly or indirectly, upon the HEW advisory committee that has the duty of studying these files and the substances, and the making of a recommendation. That disclosure would also make that information available long before a case was put together by the Department of Justice.

Again, I say we must make up our minds. Do we want strict law enforcement with respect to the abusers, the pushers, the manufacturers who have these drugs distributed in devious fashion, or do we not? That is the purpose of the bill, and we find it frustrated and nullified in great measure, in many instances.

Much of this type of information that will have to be made widely available is not of any interest or benefit to the public. Its publication would only serve to complicate drug control procedures.

Now we come to the confidentiality provisions of subsection 126(b). They are also much too broad and possibly in conflict with the record-keeping provisions of section 307 of title II. The provisions of section 307 of title II are applicable to researchers as well as the legitimate pharmaceutical industry. Subsection 126(b), which is contained in the substitute amendment, provides that any information obtained through research shall be used in such a way that no name or identifying characteristic of a research subject shall be divulged without the approval of the Secretary and the consent of the research subject. This section does not take into account research conducted pursuant to the investigational new drug procedures of the Federal Food, Drug, and Cosmetic Act, which may require that the identity of the research subjects be made known in order to establish

that they are, in fact, subjects of legitimate research.

As a result of this confidentiality provision in the substitute, we will find that the names of those who are the subjects of research cannot be divulged and no policing of those eligibilities on the part of the subjects can be done. The provisions in the law, therefore, which qualify certain persons as being objects or subjects of research cannot be enforced. It will totally nullify those provisions of the bill.

That is only one objection.

The provisions of subsection 307(e) of title II, relating to the regulations promulgated by the Secretary for researchers using controlled substances under the procedures of the Food, Drug, and Cosmetic Act, require the Secretary to consult with the Attorney General in promulgating regulations deemed necessary to insure the security and accountability of controlled substances used in research.

So with that agency charged with the responsibility of maintaining and insuring security and accountability of that process on the one hand, and on the other hand being denied the information and the files that make it possible for them to take any step toward that end, it just seems to the Senator from Nebraska that it is the old game of put and take. You put it there and you take it here.

That will be of great comfort to those who, through illegal means, improperly, and for profit, get into an illicit trade. I wonder how much comfort will be derived by the victims of these drugs and substances, and how much comfort will be derived as a result of the growing menace on the campuses, in high schools and grade schools, and in the minds of the people whose respect for the law will become even lower than in many instances it is today, who will say, "Look we have this problem. Why don't you do something about it?"

Frankly, the Department of Justice will have to say, "An amendment was adopted in October of 1970 which says we cannot get the information we need in order to enforce these laws."

There is another evil involved in this matter of disclosure. Take the example of a physician, or a technical man, or a scientific man, who is engaged in research. The Department of Justice learns about it and it gets a copy of the unpublished report on the use of amphetamines and cocaine, for example. A comparison is made in its formative stage. They have the copy of the unpublished report. The law requires that they make it widely available.

It will do more harm than it will do good. It would be premature and untimely, but the statute does not say that. The statute says when they get the information, they are to make it widely available. Scientific purposes for well-considered and perfected articles of research and provisions for research—excellent. But when we try to make that rule apply to law enforcement agencies, then we are going to get into trouble, and deep trouble.

That is what this amendment is about. We set up a law enforcement act, and side by side we take out the basis for it in title I, and substitute in its place a measure, a title, which bears a great number of pages, Mr. President. It contains 56 printed pages. This body has no committee report on it. We have no analysis, no opportunity for having the minority of the committee explain what this Senator, in his feeble way, is now trying to explain. We are simply told that title I of the bill shall be stricken—that the eight well-considered pages of title I are to be stricken, and 56 pages inserted in their place, without having the information and the knowledge as to what impact will be vested upon the succeeding titles, title II and title III.

Title II is captioned "Control and Enforcement," and title III has to do with the importation, the exportation, and the revenue law amendments. That is what we are facing here today.

I say it is a travesty upon the legislative process, despite the good intentions, the good goals, and the laudable objectives of the sponsors of this amendment, to engage in this method of legislating. That is what we are faced with. Unless this law enforcement bill, substantially in its present form, is soon enacted, we shall be visited with a great deal of trouble and serious delay.

Mr. President, an example—the Department of Defense is studying the effects of marihuana. Its study is not yet completed. There is a tentative report. The idea is that that tentative report must be checked and rechecked and evaluated.

Yet, copies of that tentative study find their way into the hands of this agency. This copy is transmitted to HEW, and it is to be made widely available. It is to be published, in effect, and it will vest more harm, and will result in more misinformation, than any other possible procedure could envision.

The provisions of title I, as presently drafted, relating to confidentiality of records, were worked out by the members of the House Interstate and Foreign Commerce Committee and representatives of the Department of Justice and the Department of Health, Education, and Welfare. All of them agree that they are more than adequate to insure the privacy of research subjects.

However, section 126(a)(4) of the amendment requires the Secretary of Health, Education, and Welfare to establish the criteria pursuant to which a registered researcher is to be authorized to manufacture or acquire controlled substances for research, and this section clearly conflicts with the regulatory provisions of title II of the bill.

There is no question about it. It is not only an intimation. It is no conjecture. There is a 180 degree clash between those two provisions.

These provisions in title II are applicable to the manufacture and handling of controlled substances by researchers as well as by the legitimate pharmaceutical industry, and they are adequate to insure that there will be adequate supplies of controlled substances available for legitimate research.

But here, Mr. President, we are faced with a document 56 pages in length which takes liberties with that well-considered conclusion reached by the committees of the House of Representatives that worked on this bill, by the Department of Justice, and by the Department of Health, Education, and Welfare, and endorsed by the action of the other body on its floor.

That is not good legislation. It is very imprudent legislation. Again I say that I commend the authors and sponsors of this amendment for their zeal and their enthusiasm to do something in the fields of rehabilitation, education, and research. We wish them Godspeed. But, Mr. President, not at the cost of impairing heavily and rendering almost impotent many of the important law enforcement procedures contained in title II. If that is the price we must pay for the adoption of this amendment, then it will be expensive indeed. Then indeed we will be saying, "Let the abusers, let the illicit traffic pushers, let the criminal importers and criminal manufacturers roam at large, and spread the supplies of these drugs and these dangerous substances without let or hindrance, and we will pin our faith exclusively on rehabilitation, prevention, education, and the like."

It does not make sense, Mr. President. And again I say, there is room for both concepts. That was testified to by Dr. Egeberg, in March of this year. There is room for both concepts, but not to have them both adopted in such a way that only parts of them are adopted, and there will be irreparable harm to both of them.

Dr. Egeberg testified in the Senate hearings on the drug bill before the Special Subcommittee on Alcoholism and Narcotics, a subcommittee of the Committee on Labor and Public Welfare. I shall read from his testimony as found on page 273 of part I of the record of those hearings. This particular testimony was given on March 24.

He testified, in substance, that there is nothing in the proposed amendment which we have before us now which is not already contained in existing law or in the text of title I, as it is found in the House passed bill. Let me read Dr. Egeberg's testimony on that point:

> We do not believe, however, that S. 3562—

Which is the equivalent of the pending amendment—

> would provide a significant degree of improvement in the authority we now have, and in some instances the bill would tend to constrain our ability to respond to the need in these areas. While I would be the last person to say that we have everything we might possibly need to mount needed programs to solve problems of drug abuse and dependency, I submit that, in terms of statutory authority and the capacity for effective coordination, our present arrangements are more desirable than those proposed in S. 3562.

He goes on to say, at a later point:

> While it is true that this bill recognizes the fact that community mental health centers are an acceptable treatment resource, such centers are by no means designated as the treatment resource of choice. The bill continues the belief—mistakenly, in our

opinion—that adequate treatment can and should be offered in separate hospital-like facilities.

For my part, I cannot subscribe to such a view, nor can the Department endorse it. To shift now from the mental health center approach to one that would assign persons in need of treatment to facilities specifically geared to drug abuse and dependency would be, in our view, unwise and unwarranted.

Mr. President, here is the man at the head of the Office of Health and Scientific Affairs, and he says it is unwise and unwarranted. That is getting down to the point of the substance of the amendment. We have had no opportunity to see the results of the workings of the best legislative minds through the regular legislative process on a measures 56 pages long—complicated, far-reaching, expensive, highly needed to be sure, but not properly attuned to other legislation which exists on this subject.

Dr. Egeberg continues in his testimony at page 276:

Dr. Miller's testimony today and our forthcoming report will comment on the bill in more detail. I would only say in conclusion that the problem of prevention and control of drug abuse is not going to be solved by any one piece of legislation or any single program nor in any single place in the federal bureaucracy.

If there is an optimum way of dealing with these problems, it will be found through the patient and knowledgeable efforts of elected and appointed officials at all levels of government, scientists, mental health workers, the patient and his family, and others who devote their best talents to solving this most difficult and tragic problem.

I am greatly encouraged by the efforts of this subcommittee and its Chairman to help evolve the improved approaches that are needed in the area of drug abuse. If we in the Department cannot subscribe to the provisions of S. 3562 we can most definitely subscribe to the objectives they seek to reach.

I would personally suggest that we, myself, other members of our group, would be delighted to discuss such things with the Chairman.

Mr. President, I subscribe to that sentiment and that declaration. We are in sympathy with the objectives of this bill. But let us achieve it in such a way that we will not impair the highly necessary and indispensable law enforcement procedures that are set out in titles II and III. And that is what is being done. Proper processing and proper coordination of the substitute in title I simply has not occurred in the procedure that we are now pursuing.

I might point out that some discussion has occurred on the floor of the Senate that there is no funding or that there is inadequate funding for the purposes at hand for this research, prevention, and education. That is not quite true, if it was said in that fashion. It is not quite true, because it should be pointed out that title I in the bill as passed by the other body authorizes $75 million for community mental health centers, $29 million for drug-abuse education, and an additional $60 million for special projects relating to drug abuse, education, and research. It should be kept in mind that the funding provisions of the amendment are very close to the existing title. There is $164 million in the House version and $190 million in the Hughes amendment, which requires State contributions as well.

Again I say, Mr. President, that section 126(a)(4) of the amendment, which requires the Secretary of Health, Education, and Welfare to establish criteria pursuant to which a registered researcher is to be authorized to manufacture or acquire controlled substances for research, clearly is in conflict with the regulatory provisions of title II of the bill. These provisions are applicable to the manufacture and handling of controlled substances by researchers as well as by the legitimate pharmaceutical industry. They are adequate to assure that there will be sufficient supplies of substances available for legitimate research.

But under the terms of the substitute, much of the information, much of the access to information, many of the procedures used for purposes of maintaining security and accountability of controlled substances are abrogated; they are made unavailable to those who are held responsible for the security and the accountability of controlled substances.

So I say that it is a game of put and take—you put it there and take it away, and then we must try, in the succeeding confusion which results, to try to reconcile those viewpoints.

It is the administration's position that this amendment is not acceptable at this time and in this place. That has been the conclusion and that has been the message from the Department of Justice and from the Department of Health, Education, and Welfare. It is the administration's position that the provisions of Senator HUGHES' amendment should be treated as separate legislation and that the House Interstate and Foreign Commerce Committee should be given an adequate opportunity to act on it. That has not been done.

I know that there are sponsors here and the author has sponsors, and that is fine. It is not a completion of the legislative process procedures, however, as we know them and as we must depend upon them in a measure of this length, of this complexity, and of this thrust into a field which is so important and so vital.

Title I as presently drafted is not intended to establish new and expansive programs and functions relating to drug abuse within the Department of Health, Education, and Welfare. It is rather intended to increase efforts in the rehabilitation, treatment, and prevention of drug abuse through existing channels and modalities, through the use of increased appropriations. The Department of Justice strongly urges that any comprehensive legislation relating to drug abuse, rehabilitation, treatment, education, and prevention should be considered as a separate piece of legislation rather than as a title to a bill which is primarily law enforcement oriented. That is why the Department of Justice recommends against the adoption of the amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a statement of John E. Ingersoll, Director of the Bureau of Narcotics and Dangerous Drugs, that was presented before the Subcommittee on Alcoholism and Narcotics on March 26 of this year.

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

(See exhibit 1.)

Mr. HRUSKA. I read the concluding paragraphs:

In conclusion, the overall intent and goals of S. 3562 are meritorious, but as indicated during the course of my testimony, many provisions create serious problems for the Department of Justice and require thoughtful reconsideration so that they meet the objectives sought without hampering or interfering with the law enforcement goals. Further, I would recommend resolution of any conflict between this legislation and the recently Senate-approved Controlled Dangerous Substances Act. As the President stated in his July 14 Message on Drug Abuse to the Congress, relating to Federal and State legislative programs, what is needed is an interlocking trellis of laws for the Federal-State effort. So too here—we need a complementary interlocking trellis of laws dealing with law enforcement on the one hand and rehabilitation and education on the other.

Mr. President, I submit again: Let each of these approaches and these concepts proceed under its own power, in its own jurisdiction, but let us not make the very grievous error of trying to get instant legislation here, where there has been inadequate effort to get the perfect coordination between the measure that has been very well considered in this Chamber, very well considered in the other Chamber of this Congress and now have it vastly changed and added to by 53 printed pages of intricate and complex provisions. Many of these are necessary, but they must comport with the provisions contained in titles II and III. If they do not, we will be in deep trouble.

Mr. President, by way of conclusion, the pending amendment is strongly opposed by the administration principally because it adds very little that is new in the way of statutory authority to the jurisdiction of the Department of Health, Education, and Welfare.

Further, the House Subcommittee on Public Health and Welfare specifically ignored the very same bill in writing title I of the bill which was approved by the other body. It deferred action on the Hughes amendment approach pending further study and analysis by the committee. It is the position of the administration that the provisions of the pending amendment should be treated as separate legislation and that the House Interstate and Foreign Commerce Committee should be given adequate opportunity to act on it.

It should be pointed out that title I of the House-approved bill authorizes $75 million for community mental health centers, $29 million for drug abuse education and an additional $60 million for special projects relating to drug abuse, education, and research.

The Department of Health, Education, and Welfare has repeatedly stated that they have sufficient statutory authority to deal with the programs of rehabilitation, education, and research in the drug field. What they need is money. That is what title I of the House passed bill pro-

vides. It provides it in a way not interfering with the law enforcement procedures of titles II and III, which is basically a law enforcement measure.

The pending amendment does interfere and does impinge upon the provisions of titles II and III as has already been indicated.

The pending amendment conflicts with some of the key enforcement provisions of title II which is before us. It does so in regard to the confidentiality of records provision and overlaps similar provisions in title II, but inadvertently also affects the recordkeeping provisions of section 307. Although it is assumed that this was not intended, the Hughes amendment would restrict accountability audits of dispensing practitioners by the Department of Justice since their records would not be open for inspection. This overturns an established procedure of some 56 years relating to narcotic drugs and some 5 years relating to dangerous drugs. That 56-year-old history commenced with the enactment of the Harrison Narcotics Act in 1914.

Basically, what the amendment would do would add another bureaucratic layer to the HEW complex with doubtful value in the context which is sought in this point of the enactment of a very much needed measure.

Mr. President, I yield the floor.

EXHIBIT 1

STATEMENT BY JOHN E. INGERSOLL, DIRECTOR, BUREAU OF NARCOTICS AND DANGEROUS DRUGS, BEFORE THE SUBCOMMITTEE ON ALCOHOLISM AND NARCOTICS OF THE SENATE COMMITTEE ON LABOR AND WELFARE, MARCH 26, 1970

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you today to express the views of the Department of Justice on S. 3562, a bill entitled, "The Federal Drug Abuse and Drug Dependence Prevention, Treatment, and Rehabilitation Act of 1970." Accompanying me today is Mr. Michael R. Sonnenreich, Deputy Chief Counsel of the Bureau of Narcotics and Dangerous Drugs.

I think we all recognize that law enforcement, education, research, and rehabilitation are integral and necessary parts of any total drug abuse control approach by the Federal Government. Some of us emphasize one aspect more than the others because of our current responsibilities. But that does not mean that we are not concerned and interested in the total process.

Speaking for the law enforcement side of this quadrant, I am pleased with the recent Senate passage of S. 3246, the Controlled Dangerous Substances Act, which is a major impetus toward achieving a more effective and systematic approach in the area of narcotic and dangerous drug law enforcement. With that Act as law, one part of the equation will have been legislatively realized. It is with the knowledge that other aspects of the problem also must be faced that the Department of Justice applauds this Subcommittee's interest and efforts to meet, analyze, and resolve these most complex areas of concern.

We are all aware that no single approach, standing alone, will be effective in adequately resolving the burgeoning drug abuse dilemma. I think Dr. Roger O. Egeberg, Assistant Secretary for Health and Scientific Affairs of the Department of Health, Education, and Welfare, made clear in his testimony on March 24, 1970, the progress which has been made, and which is being made, in the areas of education, treatment, and rehabilitation. These are areas which primarily concern the Department of Health, Education, and Welfare, and the Department of Justice defers to the views of that Department in its area of concern and expertise. However, I would like to discuss specific provisions of S. 3562 which bear either directly or indirectly on the functions of the Department of Justice in the area of drug abuse control and enforcement.

Certain statements made in the bill's Findings and Declarations pose potential problems of a prosecutive and enforcement nature to the Department of Justice. The generalization in subsection 101(a) that drug dependence is an illness or disease goes far beyond the decision rendered by the Supreme Court in *Robinson v. California*. The inclusion of such a statement in a Congressional finding will raise the specter that the allegation of drug dependence could be used as an affirmative defense in any criminal prosecution, which is contrary to existing Federal law. I might add that such a Congressional finding is not in keeping with current medical knowledge and could be a serious impediment to criminal prosecutions. The Department of Justice recommends against inclusion of such a broad finding, as it extends existing case law and creates a defense based on a definition of "drug dependence" which has never been tested in the courts.

While the Department of Justice concedes, as in the *Robinson* case, that *narcotic addiction* is a form of illness and consequently a crime of status, it is also felt that these concepts should be given reasonable application. For example, Justice Harlan in a concurring opinion in the *Robinson* case stated that he did not feel that it was irrational nor cruel and unusual punishment for a State to held narcotic addicts liable for violations of the criminal law. Mr. Justice Harlan stated further that, "Insofar as addiction may be identified with the use or possession of narcotics within the State . . . in violation of local statutes prohibiting such acts, it may surely be reached by the State's criminal law."

The Department of Justice agrees with Justice Harlan in his analysis in this area. While the Department of Justice agrees that medical treatment should be utilized when practicable, it does not subscribe to a potential argument of a defense of drug dependence. For these reasons, this finding should be modified to properly reflect both medical and prosecutive needs.

The definition of "drug related offense" in subsection 202(g) is in need of notification since, as presently drafted, it is too broad and encompasses within its definition the entire spectrum of controlled drugs, from heroin to over-the-counter cough syrups. In other words, an individual who consumes a quantity of an over-the-counter exempt narcotic preparation, such as paregoric or one of the codeine cough syrups, and then engages in criminal activity, would be committing a "drug related offense" within the definition of that term. Such a result clearly could not have been intended. If such were the intent, then every prospective criminal would be advised to consume a tranquilizer or other controlled substance so that in the event of capture, he could say that he was committing a drug-related crime. The Department of Justice feels that the definition should be seriously modified and restricted to a more limited class of drugs.

Turning now to the provisions of Title III, the Department of Justice questions the need for the establishment of a Drug Abuse Prevention, Treatment, and Rehabilitation Administration within the Department of Health, Education, and Welfare. Here again, since this is a matter primarily affecting the Department of Health, Education, and Welfare, the Department of Justice will defer to the views and recommendations expressed by Dr. Egeberg in his testimony before this Subcommittee. However, I might add that there is a considerable overlapping of functions between this newly created Administration and certain of the agencies within the Department of Justice. For example, the Administration's authority under subsection 302(b) to administer a treatment and rehabilitation program for Federal criminal offenders overlaps with the role of the Bureau of Prisons in this area. Other functions overlap with those of the Law Enforcement Assistance Administration and the Bureau of Narcotics and Dangerous Drugs. For this reason, the Department of Justice joins with the Department of Health, Education, and Welfare in recommending against the creation of such an Administration.

Subsection 304(h), authorizing this new Administration to cooperate with the medical profession in disseminating guidelines on the use of controlled dangerous substances, poses particular problems for the Department of Justice. Under both present and proposed law, these guidelines or regulations will generally be prepared and disseminated jointly by the Bureau of Narcotics and Dangerous Drugs in the Department of Justice and the Food and Drug Administration in the Department of Health, Education, and Welfare. S. 3562 would change this by vesting this function within the proposed Administration. I feel this change is unnecessary. The present system has proved to be satisfactory.

The subsection goes on further to outline the criteria under which a practitioner can prescribe, administer, or dispense controlled substances. These criteria directly conflict with the regulatory provisions contained in the Controlled Dangerous Substances Act, S. 3246, passed by the Senate on January 28, 1970, and presently pending action in the House. The Department of Justice strenuously opposes this provision as the Senate has already spoken to this issue.

Subsections 306 (b), (c), and (d) of S. 3562, which set out the research functions of the proposed Administration, would also appear to conflict with the provisions of the Controlled Dangerous Substances Act, and as such cannot be supported by the Department of Justice. Under S. 3246, a person wishing to conduct research using Schedule I substances, which are those drugs which have the highest abuse potential and no accepted medical use, must be registered by the Attorney General after he receives the advice in writing of the Secretary of Health, Education, and Welfare as to the competency of the researcher and the merits of the research protocol. Such a registration can only be denied under certain specified grounds enumerated in section 303(f) of the Controlled Dangerous Substances Act. S. 3562 would have the effect of transferring this authority into the proposed Administration or, at the least, duplicating the requirements individuals must perform in order to conduct research. Such a transferral does not take into account the fact that the Secretary of Health, Education, and Welfare presently has the ability and machinery to pass on the scientific qualifications of researchers and their research, and that the Attorney General, through the Bureau of Narcotics and Dangerous Drugs, is best qualified to determine if a researcher has established proper recordkeeping procedures and has undertaken proper safeguards to prevent diversion of controlled drugs into illicit channels. The procedures established in the Controlled Dangerous Substances Act cover this area, and the Department opposes the intent of S. 3562 in this area.

Section 309 of S. 3562, which authorizes the Administration to classify all controlled dangerous substances into one of three classes, is superfluous and conflicts with the drug scheduling contained in the Controlled Dangerous Substances Act. The criteria used for drug placement have no defined or accepted legal meanings. Criteria such as

"harmful effects on health" or "significantly contribute to crimes of violence against persons or to other grave felonious conduct" have no defined legal meaning and may be found to be constitutionally deficient because of vagueness. The Department is opposed to this classification system because it is questionable whether such criteria are legally sustainable, and because the classification system established in S. 3246 is sufficient, both medically and enforcementwise, for the intended purposes of this Act.

I have been informed by letter from the Chairman that this Subcommittee does not wish a discussion of the provisions in Titles IV and VI, and the last two sections of Title V today. However, I have been advised that the Department will be afforded an opportunity at a later time to address comments to these provisions, and therefore I will reserve any comments until that time.

In discussing the provisions of Title VII, dealing with Federal assistance for State and local programs, the Department of Justice defers to the views of the Department of Health, Education, and Welfare, since these are areas within their special expertise. However, certain of the provisions in section 704, authorizing grants and contracts for the prevention and treatment of drug abuse, overlap with the present functions of the Law Enforcement Assistance Administration. Paragraphs (5) and (7) of subsection 702(a) authorize the Secretary of Health, Education, and Welfare to make grants or enter into contracts to provide prevention and treatment services in correctional institutions, and to instruct the legal and law enforcement professions in the causes, effects, and prevention of drug dependence. The Department feels that these are more properly the functions of the Law Enforcement Assistance Administration through its grant authority, and of the Bureau of Narcotics and Dangerous Drugs through its current law enforcement training programs.

The Department of Justice questions the need for the appointment of an Advisory Committee on Drug Abuse and Drug Dependence under Title VIII. There are already a number of similar committees in existence. Dr. Egeberg mentioned the DHEW Committee in his testimony. There is a Scientific Advisory Committee under the aegis of the Department of Justice. Also the White House Interdepartmental Committee on Drug Use and Abuse, is an ad hoc committee designed to coordinate the activities of the various Federal agencies involved with the drug abuse problem. In addition, section 802 of the Controlled Dangerous Substances Act calls for the establishment of a Committee on Nongovernmental Drug Abuse Prevention and Control, to study the extent to which nongovernmental organizations are involved in the prevention and control of drug abuse, and advise as to how such organizations can best be fostered.

In conclusion, the overall intent and goals of S. 3562 are meritorious, but as indicated during the course of my testimony, many provisions create serious problems for the Department of Justice and require thoughtful reconsideration so that they meet the objectives sought without hampering or interfering with the law enforcement goals. Further, I would recommend solution of any conflict between this legislation and the recently Senate-approved Controlled Dangerous Substances Act. As the President stated in his July 14 Message on Drug Abuse to the Congress, relating to Federal and State legislative programs, what is needed is an interlocking trellis of laws for the Federal-State effort. So too here—we need a complementary interlocking trellis of laws dealing with law enforcement on the one hand and rehabilitation and education on the other.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions the Subcommittee may have at this time.

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

The PRESIDING OFFICER (Mr. GOLDWATER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. 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. DODD. Mr. President, I address myself to the amendment offered to the pending legislation by the Senator from Iowa.

I have struggled over this matter considerably since last night, and have come to the conclusion that I must object to the amendment. I want to state my reasons for doing so.

First of all, I think—as I thought last January when we debated substantially the same question—that it is a mistake to put into this law enforcement bill the rehabilitation and research and education and information aspects of the matter.

I think it will only hamper the enforcement of this good narcotics law which we can pass. This will set back the effort, slow down this war against narcotics pushers and manufacturers. That is the first thing that has to be stopped. Unless we do that as a first order of business, we will not be getting anywhere with the rehabilitation that needs to be done because the peddlers are still going to be at their same old stands.

Mr. President, every hour in this country 12 young people are arrested for narcotics violations. Since we have been debating this bill, something in the neighborhood of 50 youngsters have been arrested for possession or abuse of narcotics. Since we undertook the matter 14 months ago thousands of them have been caught in this awful situation.

Secondly, I believe the country wants us to move first against the peddlers and the pushers, the criminal element that has really brought about this situation. The people of this country have been anxiously waiting for us to pass this bill.

Now, I want to say for the record that I do not think anyone will deny that our subcommittee, and I include myself, probably has been the chief proponent of drug legislation reform. This position includes my own record regarding law enforcement, drug legislation, and drug education, rehabilitation, treatment, and research.

In 1965 the Drug Abuse Control amendments come out of our committee. That legislation is helping us a great deal. Then, we got this bill passed last January in the Senate and it went over to the House.

The Addict Rehabilitation Act came out of our committee. I made reference to that here yesterday and I was answered by my colleague who said it did not have enough money. It does not have enough money; it should have more money, but the act is there. We passed that in 1966.

Within the past half hour, I have been informed by Representative PAUL ROGERS, is the ranking member of the subcommittee of the Interstate and Foreign Commerce Committee in the House, that if this amendment offered by the Senator from Iowa is agreed to, that would be the end of the Narcotics Act this year. They simply would not take it in the House. They think they wrote a very good title on rehabilitation and they took many, though not all, of the recommendations of the Senator from Iowa. For one thing, they could not hold hearings during the remainder of the session.

If this amendment is agreed to by the Senate, we must conclude that it is the end of the narcotics bill this year. It would be a cruel thing to do to the American people.

I cannot say strongly enough that we need this rehabilitation, research, education, and treatment just as much as we need the law enforcement bill, but they must be done separately. That is why I worked to move S. 2346 through this body this year. It is a regulatory act and it does not involve drug rehabilitation.

I urge the Senate to consider the fact that this amendment is very broad in scope. It represents several new and unique approaches. Many of them are meritorious, but the fact is that the Senate has not had time to consider them as they should be considered. There is no report before the Senate and as far as I know none was ever prepared or printed.

I recall that when substantially the same amendment was offered in January we told the proponents to get a bill ready and we said, "We will help you get it passed." That was 8 months ago. It never was prepared; it never came before the Senate, or before our committee.

This amendment is basically the bill introduced by the Senator from Iowa in March of this year, which was referred to the Committee on Labor and Public Welfare. I understand some hearings were held on that bill and that the committee has considered that bill. I repeat most emphatically that S. 3562 which is basically the amendment we are now considering, has not been reported to the Senate by the Committee on Labor and Public Welfare. For whatever reasons, the committee has not acted, and the Senate has not had an opportunity to study any committee report of the measure.

That was the point Representative ROGERS made a while ago when I talked to him. He said, "We could not handle it. There just could be no further action on it."

In title I which passed the House there is much of the bill of the Senator from Iowa, S. 3562. We do not have any report from the committee. It is the customary procedure in this body to consider committee action on such a major piece of legislation as is included within the framework of this amendment before acting on it. I see no justification for even considering the amendment favorably and I would have to vote to reject it.

This is a painful thing to do and I think every Senator would feel the same way. One is placed in the position of being against rehabilitation, research, and education, which is not so.

I am perfectly willing to accept the House version of title I of the bill having to do with rehabilitation. I do it mostly because I think this bill has to be on the books and made the law of the land.

Under this bill, if passed, we will have some 500 or 600 new narcotics agents. They are badly needed right now if we are to do anything about this epidemic of drug abuse and misuse.

Lest anyone argue that the amendment before us is not a major piece of legislation, I will review the major provisions. It refers to the establishment within the Department of Health, Education, and Welfare of a National Institute for the Prevention and Treatment of Drug Abuse and Drug Dependence. I do not find any fault with the concept. However, I do object to the manner in which this major piece of legislation is being thrust upon this body. For example, we have had no time to examine in detail this amendment or determine if the approach is the best one to reduce the massive drug problem in the United States. Perhaps others have had the opportunity, but I have not.

Among other things, the institute established by the pending amendment would have broad functions, including those related to administration, planning, coordination, research, and all the ramifications of a drug prevention and treatment program at the Federal level. These provisions alone would provide a new, and I believe uncharted, approach to solving one of this Nation's most pressing problems. Surely such a proposal should not be tacked onto the pending legislation, or to any other bill, for that matter. It is a major piece of legislation we are undertaking—without a committee report—loosely, in the form of an amendment. It is substantially the same thing that the Senate refused to take in January and which the House says it cannot take in this shape and form.

I am trying to emphasize the point that if this amendment is put on the bill, we can say goodby to any narcotics law, certainly this year.

I note that the amendment also contains much of the text of title I of the House bill, but I also note that the amendment makes no reference to the Narcotic Addict Rehabilitation Act of 1966, which I, and many other Members of the Senate consider to have been a pioneering Federal effort directed at narcotic rehabilitation.

It would seem to me that any new, major drug rehabilitation legislation, such as that proposed in this amendment, would be so structured as to either encompass or expand or cross-reference provisions contained in the Narcotic Drug Rehabilitation Law of 1966.

By this statement I am simply trying to point out how inadequate the proposal is as it comes before us. It has not had the treatment it deserves. It has not had the hearings it deserves, and we do not have a report.

Thus I reluctantly must oppose this amendment, for the reasons I have given.

In conclusion, I emphasize the fact that this amendment is so broad in scope and applicability that it should not be handled in this way on the floor of the Senate.

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

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

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. GOLDWATER). The Chair, on behalf of the Vice President, appoints the Senator from Texas (Mr. YARBOROUGH) to attend the 55th—Maritime—session of the International Labor Conference, to be held at Geneva, Switzerland, October 14–31, 1970.

AMENDMENT OF INTERNATIONAL TRAVEL ACT OF 1961, AS AMENDED

Mr. INOUYE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 14685.

The PRESIDING OFFICER (Mr. GOLDWATER) laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the bill (H.R. 14685) to amend the International Travel Act of 1961, as amended, in order to improve the balance of payments by further promoting travel to the United States, and for other purposes, which was in lieu of the matter proposed to be inserted by the Senate amendment, insert:

That section 3 of the International Travel Act of 1961 (75 Stat. 129; 22 U.S.C. 2121–2126) is amended by changing the period at the end of clause 4 of subsection (a) to a semicolon, and by inserting after such clause the following:

"(5) upon the application of any State or political subdivision or combination thereof, or private or public nonprofit organization or association, may make grants for projects designed to carry out the purposes of this Act if he finds that such projects will facilitate and encourage travel to any State or political subdivision or combination thereof by residents of foreign countries. No financial assistance will be made available under this clause unless the Secretary determines that matching funds will be available from State or other non-Federal sources and in no event will the amount of any grant under this clause for any project exceed 50 per centum of the cost of such project. The Secretary is authorized to establish such policies, standards, criteria, and procedures and to prescribe such rules and regulations as he may deem necessary or appropriate for the administration of this clause;

"(6) may enter into contracts with private profit- or non-profit-making individuals, businesses, and organizations for projects designed to carry out the purposes of this Act whenever he determines that such projects cannot be accomplished under the authority of clause (5) of this subsection; and

"(7) may make awards of merchandise manufactured and purchased in the United States to travel agents and tour operators in foreign countries as an incentive for their promotion of travel to the United States by residents of foreign countries. The Secretary is authorized to establish such policies, standards, criteria, and procedures as he may deem necessary or appropriate for the administration of this clause."

SEC. 2. Section 3 of such Act (22 U.S.C. 2123) is amended by adding at the end thereof the following new subsections:

"(c) Each recipient of assistance under clause (5) of subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(d) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the assistance received under clause (5) of subsection (a) of this section."

SEC. 3. (a) Section 4 of such Act (22 U.S.C. 2124) is amended to read as follows:

"SEC. 4. There is established in the Department of Commerce a United States Travel Service which shall be headed by an Assistant Secretary of Commerce for Tourism who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary. All the duties and responsibilities of the Secretary under this Act shall be exercised directly by the Secretary or by the Secretary through the Assistant Secretary of Commerce for Tourism. In addition, the Secretary shall designate at least one individual to serve as Deputy Assistant Secretary of Commerce for Tourism who shall be under the supervision of the Assistant Secretary of Commerce for Tourism."

(b) Paragraph (12) of section 5315 of title 5, United States Code (relating to level IV of the Executive Schedule), is amended by striking out "(5)" and inserting in lieu thereof "(6)".

SEC. 4. Section 6 of such Act is amended to read as follows:

"SEC. 6. For the purpose of carrying out the provisions of this Act, there is authorized to be appropriated not to exceed $15,000,000 for each of the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973. Funds appropriated under this section shall be available without regard to the provisions of section 501 and 3702 of title 44 of the United States Code. Funds appropriated under this section for printing of travel promotion materials are authorized to be made available for two fiscal years."

SEC. 5. Section 7 of such Act is renumbered "SEC. 8." and a new section 7 is inserted to read as follows:

"SEC. 7. As used in this Act, the term 'United States' and the term 'State' are defined to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands."

SEC. 6. (a) There is established a commission to be known as the National Tourism Resources Review Commission (hereafter in this section referred to as the "Commission") composed of fifteen members as follows:

(1) One representative of the Department of Commerce designated by the Secretary of Commerce.

(2) One representative of the Department of the Interior designated by the Secretary of the Interior.

(3) One representative of the Department of State designated by the Secretary of State.

(4) One representative of the Department of Transportation designated by the Secretary of Transportation.

(5) Eleven individuals appointed by the President from private life who are informed about and concerned with the improvement, development, and promotion of United States tourism resources and opportunities or who are otherwise experienced in tourism research, promotion, or planning. The President shall designate one of the individuals appointed by him to serve as Chairman of the Commission.

(b) The Commission shall make a full and complete study and investigation for the purpose of—

(1) determining the domestic travel needs of the people of the United States and of visitors from other countries at the present time and to the year 1980;

(2) determining the travel resources of the United States available to satisfy such needs now and to the year 1980;

(3) determining policies and programs which will insure that the domestic travel needs of the present and the future are adequately and efficiently met;

(4) determining a recommended program of Federal assistance to the States in promoting domestic travel; and

(5) determining whether a separate agency of the Government should be established, or whether an existing department, agency, or instrumentality within the Government should be designated, to consolidate and coordinate tourism research, planning, and development activities presently performed by different existing agencies of the Government.

The Commission shall submit a comprehensive report of its activities and the results of such study and investigation, together with its recommendations with respect thereto, to the President and to the Congress not later than two years after the first meeting of the Commission. The Commission shall cease to exist sixty days after the date of the submission of its comprehensive report. The comprehensive report of the Commission shall propose such legislative enactments and administrative actions as in its judgment are necessary to carry out its recommendations.

(c) The Secretary of Commerce shall make available to the Commission such secretarial, clercial, and other assistance as the Commission may require to carry out its functions under this section. The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance it deems necessary to carry out its functions under this section; and each such department, agency, and instrumentality is authorized to cooperate with the Commission and; to the extent permitted by law, to furnish such information and assistance to the Commission upon request made by its Chairman.

(d) In order to carry out the provisions of this section, the Commission is authorized—

(1) to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of the operations of the Commission;

(2) to appoint and fix the compensation of such officers and employees as are necessary to carry out the provisions of this section and to prescribe their authority and duties; and

(3) to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(e) (1) Members of the Commission from private life, while engaged in the performance of their duties as members of the Commission, shall receive compensation at a rate to be fixed by the President, not to exceed $100 each day, including traveltime, and shall, while so serving away from their homes or regular places of business, be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) Members of the Commission who are officers or employees of the United States shall serve without additional compensation, but shall be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(f) There are authorized to be appropriated such sums, not to exceed $750,000, as may be necessary to carry out the provisions of this section.

Mr. INOUYE. Mr. President, in its present form, H.R. 14685 passed the House of Representatives on October 6. It is identical to a conference report which the Senate adopted on July 15, except that the authorization in the House-passed bill is $750,000 for the National Tourism Resources Review Commission, whereas the amount in the conference report we adopted would authorize $1,250,000 for that Commission. In other words, there is a reduction of $500,000.

When that conference report was before the Senate on July 15, the very able chairman of the Commerce Committee, the distinguished senior Senator from Washington (Mr. MAGNUSON) thoroughly set forth the need for this legislation and the reasons for its adoption. I shall not, therefore, take the Senate's time to repeat those reasons.

Nor will I trouble the Senate with a recitation of the facts surrounding the rather circuitous route by which this legislation appears before us once again.

Suffice it to say that H.R. 14685 in the form we are now considering it is, with the one exception I mentioned earlier, identical to the provisions the Senate previously adopted and has the bipartisan support of both Houses. It is a good bill.

Mr. President, I move that the Senate concur in the amendment of the House.

Mr. JAVITS. Mr. President, this is a matter of very great importance. It originated in the establishment of the U.S. Travel Agency some years ago in a bill which I sponsored with the Senator from Washington (Mr. MAGNUSON), who took the matter up here and got something done which I had been trying to do for 10 years or more, and I think it was a great service to our country.

This particular bill begins to recand I am very grateful for the gifted ognize the issue. It is a combination of a bill of mine and a bill which Senator MAGNUSON developed in the committee, leadership of Senator INOUYE in dealing with the matter. The conference has not resulted in everything that we wanted, but it does have a provision with respect to the National Tourism Resources Commission which is critically important. It does for the first time really tie in the travel programs of the various States, many of which have done individually far more than the United States as a whole. Promoting foreign travel to the United States is critically important in terms of the balance of payments as well as in terms of our international posture as a leader of the world.

The bill also recognizes the important contribution being made by the U.S. Travel Service under its excellent and imaginative Director Langhorne Washburn. Both the increase in authorizations for the Travel Service and the elevation of its Director to the rank of Assistant Secretary of Commerce will mark positive steps toward putting this country on a par with the rest of the world in its efforts to attract international tourism. I ascribe this show of confidence in the U.S. Travel Service in part to the thorough review of our travel programs—the first of its kind since passage of the Travel Act of 1961—by the House and Senate Commerce Committees under their very able chairmen.

On the whole, I feel that the Senate did about as well as it could, though there is still a very long way to go before we really redeem the promise which is inherent in the fact that the United States is probably the greatest tourist attraction in the world. Other nations, far smaller and poorer than the United States, do infinitely more in terms of the world effort to stir tourism than we do. There is still an enormous area for improvement. In many, many ways, including immigration requirements, we are far from where we ought to be in terms of encouraging tourism. On a local level, for example, very few of the great cities have police officers or other officials who speak the languages of many of our visitors.

But this bill does represent the second landmark step after the passage of the original legislation. It does adopt some of the major features of the measure I introduced, and I am very hopeful that it can be made to mark a major step forward in encouraging travel to the United States, which is now generally recognized to be important to our country.

I should like to point out again what has been pointed out time and again—that in an imbalance in international payments which has hovered around the $4 billion mark for some years, over $2 billion is attributable to the travel gap—that is, what our tourists spend abroad compared with what is spent here by tourists.

None of us begrudges this travel by American tourists; on the contrary, we applaud and encourage it. But we deserve to do very much better on the interchange than we have done. This bill will help some, but we would be deluding the Senate—I am sure Senator Inouye would agree—if we led the Senate to believe that this is the whole ball game. It is far from it. It will help, however, and we must be grateful that we have come a bit further than where we were.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Hawaii that the Senate concur in the amendment of the House.

The motion was agreed to.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD of West Virginia. Mr. President, there is an indication that a live quorum is desired. I therefore suggest the absence of a quorum and ask that the Senate attachés put the word out to Senators on both sides of the aisle that this will be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 361 Leg.]

Allen	Ervin	Miller
Baker	Griffin	Packwood
Bible	Gurney	Pastore
Boggs	Hart	Percy
Brooke	Hollings	Ribicoff
Byrd, W. Va.	Hruska	Saxbe
Case	Hughes	Schweiker
Cotton	Javits	Scott
Cranston	Long	Stennis
Dodd	Magnuson	Thurmond
Dole	Mansfield	Young, N. Dak.
Dominick	Mathias	
Ellender	McIntyre	

Mr. KENNEDY. I announce that the Senator from Nevada (Mr. CANNON), the Senator for Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), 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 Missouri (Mr. SYMINGTON), and 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 Georgia (Mr. TALMADGE), the Senator from Texas (Mr. YARBOROUGH), the Senator from Ohio (Mr. YOUNG), and the Senator from Alabama (Mr. SPARKMAN) are absent on official business.

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senator from New York (Mr. GOODELL), 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 PRESIDING OFFICER (Mr. SCHWEIKER). 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	Fulbright	Mondale
Anderson	Hansen	Nelson
Bayh	Hatfield	Pearson
Bennett	Holland	Pell
Burdick	Inouye	Proxmire
Byrd, Va.	Jackson	Randolph
Church	Jordan, Idaho	Russell
Cook	Kennedy	Smith, Maine
Cooper	McCarthy	Spong
Curtis	McClellan	Stevens
Eagleton	McGovern	Williams, N.J.
Eastland	Metcalf	Williams, Del.

The PRESIDING OFFICER. The quorum is present.

The question is on agreeing to the amendment of the Senator from Iowa.

Mr. DODD. Mr. President, I may say that I understand a motion to table the amendment of the Senator from Iowa will be made very shortly. At this time I would like to repeat what I said before. I am not opposed to the idea of the narcotics bill. As I said, a good title I was put in by the House committee, which had studied the matter for a long time. I have taken my opposition to the amendment because, as I said earlier, we have been given notice that we can say goodbye to a narcotic bill this year if the amendment is passed. I think that is a compelling reason for opposing the amendment.

The bill has a good title on narcotic rehabilitation. It is a good provision. I hope it will be possible for the country to get a good narcotic law. I get more mail and phone calls on the subject of narcotics than I do anything else, from fathers, mothers, ministers, and others. I suppose the hoodlums are watching us, as they did in January. They are hoping the bill fails.

I urge the Senate to reject the amendment, highly motivated as it is, and notwithstanding that we need a program of drug rehabilitation. We have to do separate things separately.

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

Mr. DODD. I yield.

Mr. HOLLAND. I am glad the Senator from Connecticut referred to the fact that my colleague, Representative ROGERS, of West Palm Beach, came over to visit the Senator. He also visited with me. He said he was sure his committee would be glad to study all of the subject matters that were embodied in this particular amendment, that they had not had a chance to do so, that they had worked long on the other bill, that he was reasonably certain that if we adopted this amendment, the House, which is going home right away, all of them running for election, would never find it possible to go into it in the detail which would be required, and that it would mean loss of the bill.

I am not an expert in this matter. I do not know all the contents of this amendment. I do know that that is what my distinguished colleague told me very seriously, and I know that he meant what he said. I wanted to corroborate completely the statement of the Senator from Connecticut in that regard, and I thank him for yielding to me.

Mr. DODD. I thank the Senator from Florida for his contribution.

I should have said earlier, and I want it clearly understood that, as far as I am concerned, I am willing to take the House bill. I am not saying it is all it should be, but we never get all we want. It has a good rehabilitation section in it. If we send it to the President, we will have a narcotics law that we badly need. One thing we all can agree on. We cannot delay it any longer. As I said, every day 12 youngsters less than 21 years of age are arrested for narcotics violations.

I hope the Senate will not approve the amendment.

I yield to the Senator from Washington (Mr. JACKSON).

DESIGNATION OF CERTAIN LANDS AS WILDERNESS

Mr. JACKSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3014.

The PRESIDING OFFICER, laid before the Senate the amendment of the House of Representatives to the bill (S. 3014) to designate certain lands as wilderness, which was to strike out all after the enacting clause, and insert:

DESIGNATION OF WILDERNESS AREAS WITHIN NATIONAL WILDLIFE REFUGES

SECTION 1. In accordance with section 3(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(c)), the following lands are hereby designated as wilderness;

(a) certain lands in the (1) Bering Sea, Bogoslof, and Tuxedni National Wildlife Refuges, Alaska, which comprise about forty-one thousand one hundred and thirteen acres, three hundred and ninety acres, and six thousand four hundred and two acres, respectively, and which are depicted on maps entitled "Bering Sea Wilderness—Proposed", and "Bogoslof Wilderness—Proposed", and "Tuxedni Wilderness—Proposed", dated August 1967, and (2) the lands comprising the Saint Lazaria, Hazy Island, and Forrester Island National Wildlife Refuges, Alaska, which comprise about sixty-two acres, forty-two acres, and two thousand six hundred and thirty acres, respectively, and which are depicted on maps entitled "Southeastern Alaska Proposed Wilderness Areas", dated August 1967, which shall be known as the "Bering Sea Wilderness", "Bogoslof Wilderness", "Tuxedni Wilderness", "Saint Lazaria Wilderness", "Hazy Islands Wilderness", and "Forrester Island Wilderness", respectively;

(b) certain lands in the (1) Three Arch Rocks and Oregon Islands National Wildlife Refuges, Oregon, which comprise about

seventeen acres and twenty-one acres, respectively, and which are depicted on maps entitled "Three Arch Rocks Wilderness—Proposed", and "Oregon Islands Wilderness—Proposed", dated July 1967, and (2) the lands comprising the Copalis, Flattery Rocks, and Quillayute Needles National Wildlife Refuges, Washington, which comprise about five acres, one hundred and twenty-five acres, and forty-nine acres, respectively, and which are depicted on a map entitled "Washington Islands Wilderness—Proposed", dated August 1967, as revised January 1969, which shall be known as "Three Arch Rocks Wilderness", "Oregon Islands Wilderness", and "Washington Islands Wilderness", respectively;

(c) certain lands in the Bitter Lake National Wildlife Refuge, New Mexico, which comprise about eight thousand five hundred acres and which are depicted on a map entitled "Salt Creek Wilderness—Proposed", and dated August 1967, which shall be known as the "Salt Creek Wilderness";

(d) certain lands in (1) the Island Bay and Passage Key National Wildlife Refuges, Florida, which comprise about twenty acres each and which are depicted on maps entitled "Island Bay Wilderness—Proposed" and "Passage Key Wilderness—Proposed", dated August 1967, and (2) the Wichita Mountains National Wildlife Refuge, Oklahoma, which comprise about eight thousand nine hundred acres and which are depicted on a map entitled "Wichita Mountains Wilderness—Proposed", dated October 1967, which shall be known as "Island Bay Wilderness", "Passage Key Wilderness", and "Wichita Mountains Wilderness", respectively;

(e) certain lands in (1) the Seney, Huron Islands, and Michigan Islands National Wildlife Refuges, Michigan, which comprise about twenty-five thousand one hundred and fifty acres, one hundred and forty-seven acres, and twelve acres, respectively, and which are depicted on maps entitled "Seney Wilderness—Proposed", Huron Islands Wilderness—Proposed", and "Michigan Islands Wilderness—Proposed", (2) the Gravel Island and Green Bay National Wilderness Refuges, Wisconsin, which comprise about twenty-seven acres and two acres, respectively, and which are depicted on a map entitled "Wisconsin Islands Wilderness—Proposed", and (3) the Moosehorn National Wildlife Refuge, Maine, which comprise about two thousand seven hundred and eighty-two acres and which are depicted on a map entitled "Edmunds Wilderness and Birch Islands Wilderness—Proposed", all said maps being dated August 1967, which shall be known as "Seney Wilderness", "Huron Islands Wilderness", "Michigan Islands Wilderness", "Wisconsin Islands Wilderness", and "Moosehorn Wilderness", respectively;

(f) certain lands in the Pelican Island National Wildlife Refuge, Florida, which comprise about three acres and which are depicted on a map entitled "Pelican Island Wilderness—Proposed" and dated August 1970, which shall be known as the "Pelican Island Wilderness"; and

(g) certain lands in the Monomoy National Wildlife Refuge, Massachusetts, which comprise about two thousand six hundred acres but excepting and excluding therefrom two tracts of land containing approximately ninety and one hundred and seventy acres, respectively and which are depicted on a map entitled "Monomoy Wilderness—Proposed" and dated August 1970, which shall be known as the "Monomoy Wilderness".

DESIGNATION OF WILDERNESS AREAS WITHIN NATIONAL PARKS AND MONUMENTS

SEC. 2. In accordance with section 3(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(c)), the following lands are hereby designated as wilderness:

(a) certain lands in the Craters of the Moon National Monument, which comprise about forty-three thousand two hundred and forty-three acres and which are depicted on a map entitled "Wilderness Plan, Craters of the Moon National Monument, Idaho", numbered 131-91,000 and dated March 1970, which shall be known as the "Craters of the Moon National Wilderness Area";

(b) certain lands in the Petrified Forest National Park, which comprise about fifty thousand two hundred and sixty acres and which are depicted on a map entitled "Recommended Wilderness, Petrified Forest National Park, Arizona", numbered NP-PF-3320-O and dated November 1967, which shall be known as the "Petrified Forest National Wilderness Area".

DESIGNATION OF WILDERNESS AREAS WITHIN NATIONAL FORESTS

SEC. 3. In accordance with section 3(b) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(b)), the following lands are hereby designated as wilderness: the area classified as the Mount Baldy Primitive Area with the proposed additions thereto and deletions therefrom, as generally depicted on a map entitled "Proposed Mount Baldy Wilderness", dated April 1, 1966, comprising an area of approximately seven thousand acres, within and as a part of the Apache National Forest, in the State of Arizona.

SEC. 4. As soon as practicable after this Act takes effect, a map and a legal description of each wilderness area shall be filed with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 5. Wilderness areas designated by or pursuant to this Act shall be administered in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary who has administrative jurisdiction over the area.

Mr. JACKSON. Mr. President, this legislation represents the single largest effort to designate certain lands as part of our national wilderness system since the enactment of the original Wilderness Act in 1964.

It is a type of omnibus bill which represents the distillation of many hours of legislative hearings and committee action on proposals for additions to the national wilderness preservation system, both in the Senate and the House of Representatives.

This legislation, as amended by the House, brings together in one measure the wilderness legislation considered and passed by the Senate in connection with several bills. The areas are located in 12 States and together total approximately 201,000 acres that would be added to the wilderness system.

Differences between this legislation and that which the Senate has approved includes the deletion by the House of two Arizona primitive areas, Pine Mountain and Sycamore Canyon, which a Senate passed bill, S. 710, would have placed in wilderness. I understand this action to delete these areas was taken at the request of Congressman STEIGER of Arizona. It is certainly my hope that these two fine mountain areas can be added to the system in the future, but the Senate will not object to their deletion now because to do so at this late hour in the session might jeopardize the entire bill.

The House bill also increases the size of the proposed Craters of the Moon Wilderness Area in Idaho by 2,243 acres by including Big Cinder Butte; excludes some 260 acres of the proposed Monomoy Island Wilderness in Massachusetts for nonconforming uses, and also would include as wilderness a portion of the Petrified Forest National Park in Arizona. The Senate is willing to accept these changes.

I do want to clarify one other point raised by the House amendment.

Section 5 of S. 3014 as amended makes applicable to the national park system wilderness areas the provisions of the Wilderness Act governing areas designated by that act, as if such areas were designated upon the passage of the Wilderness Act of 1964. Thus, the prohibitions in certain provisions of the 1964 Wilderness Act on certain uses in wilderness areas are made applicable to the wildernesses in these two park areas of the present bill. This does not apply, it should be pointed out, in other provisions of the 1964 act which specifically refer to "national forest wilderness areas."

Section 4(a)(3) of the Wilderness Act is in no way mitigated by section 5 of the subject bill. This is the section which states the designation of a portion of a national park system unit as wilderness shall in no way lower the standards for use and protection which have evolved over the years. Other provisions of the Wilderness Act such as mining, grazing, and the like would not be applicable to these two park areas because the 1964 act provides for these uses only within national forest wildernesses.

The effect of section 5 on S. 3014 is, therefore, beneficial in that it preserves existing administrative authority with respect to the management of these two national park system areas while imposing the additional protective limitations on uses that may be made of these designated wildernesses. While national park system areas, wildlife refuge areas, and national forest areas are designated wildernesses by this act, there are certainly dissimilarities in how they will be administered, but this bill, S. 3014, provides a uniform elevation of the degree of protection against antiwilderness usage.

The report of the House committee, I believe, reinforces the legislative history of my statement on this point, and I quote:

In considering these proposals, the committee found that each of the three agencies involved, that is, the Forest Service of the Department of Agriculture and the National Park Service and the Bureau of Sport Fisheries and Wildlife of the Department of the Interior, had recommended language for the administration of their respective areas that was not uniform. The adoption of the recommended language would have allowed and permitted certain activities in wilderness areas created from National Parks and Monuments and Wildlife Refuges not authorized or contemplated by the Wilderness Act of 1964. For this reason, the committee adopted the language contained in the 1964 act as

the standard for the administration of all wilderness areas whether created from parks, monuments, refuge areas or from the national forests. It should be added, however, that this does not authorize any activities presently prohibited within these areas. For example, where mining, mineral leasing, hunting or grazing of livestock is now prohibited or restricted, as is the case in most national parks and monuments, these activities would remain prohibited or restricted.

With this understanding, Mr. President I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The Senate resumed the consideration of 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.

Mr. HART. Mr. President, from the comments just made by the Senator from Connecticut, I understand that a motion shortly shall be made to table the pending amendment, the Hughes amendment.

Mr. DODD. Mr. President, I understand the Senator from Nebraska will make such a motion.

Mr. HART. I am grateful for the information, because I have some remarks to make before that motion is made, a motion which I will oppose.

Mr. President, no problem is more critical to the concern over crime, and violence, and human waste in America, than the Nation's drug crisis.

Drug abuse is at the heart of our major cities' law-enforcement failures. Experts agree that addicts, driven by their drug hunger, commit nearly half of the street crime in our cities. Meanwhile, the huge profits from the illicit traffic bankroll other underworld enterprises.

For the addicts themselves, life truly becomes a treadmill to oblivion. For the society, their lives are at best a tragic human waste. But the addict is not the only one who suffers from his affliction. When addicts resort to crime to support their expensive habits, it is the innocent victims of those crimes who ultimately pay. Particularly in our metropolitan areas, that price is frightfully high.

For example, testimony before Congress last spring indicated that some 6,000 addicts now walk the streets of Detroit. The best estimate of local authorities is that each addict needs about $50 a day to support his habit. To raise that amount he must steal $200 worth of property or cash daily. Thus, this condition now costs Detroit an annual toll of about $438 million—not to mention the terrible toll of human tragedy.

At the same time, yet additional thousands are in the process of becoming drug abusers of other sorts.

For years, we in Congress have proclaimed alarm at the drug crisis, but failed to make the full commitment necessary to make a real dent in the problem. We can wait no longer.

This bill marks an important step because it formally indicates congressional recognition that a sustained two-pronged attack is needed: tougher, more effective enforcement against illegal traffic, combined with a massive national effort to treat and rehabilitate addicts and drug abusers.

The bill properly strengthens efforts to control drug traffic and improve control of dangerous substances. It places drug-enforcement emphasis where it should be: on wiping out the pushers and mobsters behind the distribution networks, rather than on isolated arrests and disproportionately severe punishment of individual beginning offenders. It provides the flexible tools needed to deal appropriately with each category of offender.

But strengthened penalties and controls will ultimately be worth little without a vastly expanded effort to reduce crime by treating addicts' drug hunger and preventing addiction of others not yet trapped. While addicts who commit crimes must be prosecuted, the revoling-door approach—arrest, imprisonment, and eventual return to the street, still an addict—will not make a lasting impact on the problem.

That is why I was happy to cosponsor the comprehensive drug abuse prevention treatment and rehabilitation measure introduced by the able junior Senator from Iowa (Mr. HUGHES). The Senator from Iowa has labored long to draft an integrated and expanded Federal effort in every aspect of drug-abuse control—through education, through research, and through treatment. Much of this legislation would be incorporated into the bill before us by the Senator from Iowa's substitute amendment for title I.

I am particularly pleased that the proposed substitute title I authorizes substantial assistance to local drug-treatment projects, both public and private, in addition to the funds which would be made available for comprehensive statewide planning and programs in the drug field. It is this title substitute which now is pending.

The amendment also takes the important step of creating a central Federal agency with stature appropriate to the priority we must give the drug problem and assures adequate coordination of research, education, and treatment efforts.

I strongly endorse the Senator's amendment and urge my colleagues to support it, as we unanimously supported the Senator's farsighted efforts in the field of alcoholism prevention and control.

Mr. President, I hope very much that we shall not table the Hughes amendment, an amendment which I cosponsor. I hope the tabling motion is rejected and the amendment of the Senator from Iowa is agreed to. The bill, especially with the strength that would be added by the adoption of the Hughes amendment, is something that the country desperately needs; and I rise now to commend again the Senator from Iowa for the thought, effort, and energy he spent in raising the sights of all of us. I hope we do not table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

Mr. HUGHES. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. HRUSKA. Mr. President, it is my intention to move to lay the amendment on the table after a very few brief remarks.

We are considering here a very important bill. It is a well-considered bill. It was considered by this body last January, and after 4 days of debate, it was passed without dissent. It was the result of deliberate action here as well as in the House of Representatives, for the purpose of enacting a law-enforcement bill.

Now we are faced with a vote, shortly, upon an amendment 56 printed pages in length, which seeks to be substituted for title I of the bill, which has eight printed pages. It is the position of the Department of Justice, of the Department of Health, Education, and Welfare, of the House committee, and of the House of Representatives itself by its action on the measure, that the substance of that substitute amendment is unwise, unwarranted, and highly untimely,

The objectives of the amendment in the fields of research, rehabilitation, prevention, and education are good, but the trouble is that in the substitute are found many provisions which conflict with other provisions to be found in titles II and III, which contain the law enforcement provisions. There are contradictions, and there will be many uncertainties. The impingement upon the law-enforcement provisions will be considerable in the field of classification of drugs, in the field of confidentiality of records, in the field of researchers' registration, in the field of enabling the Department of Justice to carry out its obligations for security, and in the policing of the present criminal statute.

There would be a provision for making widely and indiscriminately available all material—all material, Mr. President, not only the research material, not only the educational material, but all material—that any of the agencies obtain on this subject, and that includes the Department of Justice. It would be entirely impossible for the Department of Justice, caught between the publication of information and the confidentiality of records, to investigate a case to a point where it could make a proper prosecution of a case, or secure reclassification of a drug.

There is clear indication, Mr. President—and I would like to make this clear to my colleagues—that the House of Representatives will not accept the substitute amendment. It is my information that the substance of the substitute amendment is the subject of a bill now pending there. Clear indication and representation has been made to me that they will insist upon hearings on that bill, and they will not now accept it as a part of this bill. Because it is too broad and

it is without the necessary coordination between the substitute and titles II and III of this law-enforcement bill, it will not be acceptable, and I therefore, suggest the very high probability that it may result in no bill being enacted at all during this Congress.

Mr. President, I cannot imagine any greater tragedy in the field of law enforcement generally. All of us know the impact on sidewalk crime and crime generally by the drug traffic, and the impact of the use of drugs. But there is that high probability that by adopting this amendment we will be saying this Congress does not want a drug bill this year.

This is an urgent bill. It is extremely urgent. It is urgent for the reason that there is a model bill for State legislatures to consider, which is based upon the passage of this bill. Come January, we will have legislatures meeting, and they will want to know that this bill is law, so that they may proceed to the consideration of the model bill, which will undertake policing and enforcement on the local scene, on campuses, and in high schools and grade schools.

Delay would be fatal in this regard.

I, therefore, strongly urge that clear consideration be given in reviewing this amendment, as this body did last January. That decision was made in January, and this is the same proposition. The field covered by the substitute amendment is good, and we need it and should have it, but we should not have it in a bill that will impair the law-enforcement law, which is also a great need. We can have both, separately, but we cannot have both if the substitute is adopted.

Mr. President, before I make the motion, I should like to ask if any other Senator wishes to be heard.

Mr. HUGHES. Mr. President, I should like to have an opportunity to be heard, if I may, before the motion is made.

Mr. HRUSKA. I yield to the Senator from Iowa.

Mr. HUGHES. Mr. President, I have listened very carefully to the arguments that have been made most of today and last night against this particular amendment. I really have nothing to say at this time about the amendment that has not already been said, but on the chance that some of the Members of this body did not have an opportunity to read the RECORD this morning, nor have they had an opportunity to hear the debate during the day because of other business activities that have kept them out of the Chamber, I would simply like to restate some of the things that have already been stated.

This is not a quickly thought-out matter that somehow got brought in as a substitute amendment. It is a product that is supported by every member of the Committee on Labor and Public Welfare of this body. It is an amendment that is supported, I might add very strongly, by the members of that committee on a bipartisan basis. There is nothing partisan about it. The distinguished Senator from Colorado (Mr. DOMINICK) has, I think, addressed himself very eloquently to the amendment, in its behalf.

We have held 20 months of hearings in this subcommittee. We have labored long and hard in trying to develop the matters now before this body. It was said last night that this was something new being injected into a law-enforcement bill, but the matter is already in the bill, in title I, and already before this body. It is a proper matter for consideration, and it should be considered keeping in mind the depth of investigation that has been done by the appropriate committee of this body, which has spent months and months and held hearings all across the length and breadth of this land, that have wound up in the culmination of the presentation of the pending amendment.

This does not deal with the law-enforcement subjects that are in the bill. Everyone in this body, I am assuming, is for law enforcement. Everyone is for education, prevention, and rehabilitation. The big question seems to be, Is this the proper vehicle?

It seems to me to have been presented here today that some Members of the House of Representatives have indicated that if this body should decide to adopt this amendment, there would be no bill at all, law enforcement or otherwise. I cannot conceive of that, under any possible sort of circumstances, that the Members of the House of Representatives would indicate they would not support a law-enforcement bill because it had rehabilitation, education, and prevention procedures in it.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. No such thing was said by Representative PAUL ROGERS, and I did not say it, either, and I never heard anyone else say it.

Mr. HUGHES. I apologize to the Senator if that was not said. I understood it that way.

Mr. HRUSKA. Mr. President, that is not the reason the House of Representatives would refuse at this time to consider this bill—not because it has educational, rehabilitation, and research provisions in it. It is the fact that the bill has not been reported by the Committee on Labor and Public Welfare. I do not know why. It has been here 20 months. And it is the fact that the House of Representatives has not even had hearings. They want a bill; they say they do. But they want one considered and balanced, and one that will not interfere with law-enforcement procedures.

Mr. DODD. Furthermore, we should point out that as the bill came back to us from the House of Representatives, title I was in the bill, added by the House. It covers the same subject matter. The position of the House Members with respect to this amendment is what I said it was. They said they had had no chance to go through this; and that they did the best they could, after months of hearings. They knew that the Committee on Labor and Public Welfare in this body did not even print a report on this amendment. That is the difficulty. But the Members of the House of Representatives are not opposed to rehabilitation in the bill. They have it in already.

Mr. HUGHES. Mr. President, if I misquoted what I thought I heard here on the Senate floor, I apologize to any of the Members of this body whom I apparently misunderstood. The RECORD will indicate whatever was said. There was no intention on my part to misquote anyone in representation of what they have said here. The RECORD speaks for itself.

I should simply like to invite the attention of Senators to the fact that apparently the leadership of both Houses have agreed to return in November. I know of no reason why we cannot proceed with the debate on this bill today and possibly finish it tonight, for all I know, and a conference could be held if this amendment is adopted immediately. If it cannot be held, it can be held in November, when we return, and there still could be a bill.

I have listened to the arguments that State legislatures will be meeting in January and they need to know and they need the appropriation. I am familiar with the problems of State governments, having been a Governor recently of my own State for three terms and working with State general assemblies, realizing the necessity of Federal funding to reach down through this tripartite system of government—Federal, State, and local—and to those organized bodies working outside of governmental structures that are also reaching out and retrieving those people who are drug dependents or narcotics addicts.

I believe this amendment speaks to those points as an absolute necessity, and I believe this body should adopt this amendment, with this particular bill, and it would increase and strengthen the bill rather than take from its main direction.

I yield the floor.

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

Mr. HRUSKA. I yield.

Mr. JAVITS. Mr. President, I am the ranking minority member of the Special Subcommittee on Alcoholism and Narcotics, and Senator HUGHES is the chairman. I strongly support him, and I hope very much that the Senate will adopt this amendment.

We have heard the argument that the other body will not go to conference, that they will kill it in conference. When they pass a bill, they are anxious to get it put into law, just as we are; hence, these problems arise.

The Senator from Nebraska (Mr. HRUSKA) raises, quite properly what happens in conference. These differences are settled. Every one of us has served on conference committees, and we know that we reconcile bills which have these problems all the time.

What is important here is that we tell the American people that drug abuse prevention, treatment, and rehabilitation are among the most pressing problems before us. When we have an opportunity to substitute for a very generalized House provision, which attempts to cover exactly the same ground that Senator HUGHES' amendment—joined in by every member of the Committee on Labor and Public Welfare—seeks to cover, we should not miss it. Therefore, we ought to take the better articulated, the more completely detailed amendment, with a

better chance, in terms of administration, of doing the job, rather than the once-over-lightly title I which is contained in this bill on the prevention, treatment, and rehabilitation phase.

I have confidence that the conferees, once the Senate gives them a mandate, will loyally carry out that mandate and will in conference work out the problems insofar as they affect the criminal phases and retain the best elements of the rehabilitation sections, which are those contained in the Hughes amendment.

I have two other points, Mr. President, and I shall not detain the Senate very long.

First, why did not the committee report this amendment as a bill? The committee is unanimously behind this amendment. They have all endorsed it, with more unanimity than we often find in reporting a bill. The reason why we did not report it is that we were very much occupied with writing the alcoholism bill, and we simply could not do both at the same time. But the turn of this comprehensive drug abuse prevention, treatment, and rehabilitation bill was, as it were, right around the bend. We had just recently completed the alcoholism bill; hence, we simply had not caught up with our work for the very good reason, as I have explained, that the alcoholism bill had the priority, quite properly, and we wrote that first.

Second, and very important, is that the time to act on this matter is now. The whole country looks to the Federal Government for a better answer than it has given.

I should like to pay all honor and tribute—he was not present yesterday when I said this—to the Senator from Arkansas (Mr. MCCLELLAN), opposite whom I sat in the Judiciary Committee, when the first provision with respect to rehabilitation and the medical treatment of narcotics addicts was tacked onto another bill and the first money was provided—approximately $15 million.

It is now time that we took the second major step, well implemented, well thought out, based upon very extensive hearings. This will be a meaningful contribution to the efforts of States and cities like my own. New York is unhappily the narcotics addiction capital of the United States. That it is a terribly depressing thing to say, because we think that as much as 50 percent of our crime is attributable to the issue of narcotics addiction. It is a dreadful thing for the largest city in the United States.

The way to meet it is to give us a well articulated plan at the earliest possible moment, and this is the earliest possible moment.

So I hope that the Senate will act in answer to this national exigency, notwithstanding, with the greatest deference and respect to the feeling of the managers of the bill on both sides, that it will present problems to them in the negotiations. I think that we have a right to have confidence in them, that if the Senate says it wants this, they will negotiate the problems in respect to criminal prosecution, which Senator HRUSKA, as I have said, has quite properly pointed out, and will retain the very best features of the bill.

In conclusion, we have tried the criminal route time and again. We tried it 20 years back, when I was a Member of the House of Representatives. We passed the Boggs bill, very much escalating the penalties on pushers and dealers; and now we still have the biggest narcotics problem that the country has seen. Some other approach is needed to assist the various New York City Addiction Services Agency and community prevention, treatment, and rehabilitation programs such as the following:

New York City narcotic addiction and drug abuse programs

Type:	*Approximate No.*
Therapeutic communities	30
Day care centers	10
Community orientation centers	40
Youth centers	21
Detoxification facilities	4
Confinement facilities	4
Teacher training programs	100
Methadone maintenance programs	10
Peer group leadership programs	12

Examples of above:

1. Phoenix House; Daytop; Logos, Samaritan Harlem Confrontation; Exodus; Harlem ARC.
2. Reality House; Samaritan Hospital.
3. Brownsville COC; South Jamaica COC; Harlem COC; Queens COC.
4. Ditto No. 3.
5. Lincoln, Beth Israel, Harlem, Interfaith Hospitals.
6. Edgecomb; Manhattan Rehab.
7 & 9. Public schools.
8. Beth Israel; Mt. Sinai; Harlem & Roosevelt Hospitals.

That is what is sought to be accomplished by the Hughes amendment. I hope very much that the Senate will adopt it.

I thank the Senator for yielding.

Mr. HRUSKA. Mr. President, I move to lay the pending amendment on the table.

Mr. HUGHES. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nebraska. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BIBLE (after having voted in the affirmative). On this vote I have a live pair with the Senator from Massachusetts (Mr. KENNEDY). If he were present and voting, he would vote "nay." I have previously voted "yea." I withdraw my vote.

Mr. ELLENDER (after having voted in the affirmative). On this vote I have a live pair with the Senator from Maine (Mr. MUSKIE). If present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), 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 Missouri (Mr. SYMINGTON), and 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 Georgia (Mr. TALMADGE), the Senator from Texas (Mr. YARBOROUGH), the Senator from Ohio (Mr. YOUNG), and the Senator from Alabama (Mr. SPARKMAN) are absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Texas (Mr. YARBOROUGH), the Senator from Ohio (Mr. YOUNG), and the Senator from Oklahoma (Mr. HARRIS) would each vote "nay."

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senator from New York (Mr. GOODELL), 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.

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from New York (Mr. GOODELL). If the present voting, the Senator from Texas would vote "yea," and the Senator from New York would vote "nay."

On this vote, the Senator from South Dakota (Mr. MUNDT), is paired with the Senator from California (Mr. MURPHY). If present and voting, the Senator from South Dakota would vote "yea," and the Senator from California would vote "nay."

The result was announced—yeas 21, nays 49, as follows:

[No. 362 Leg.]

YEAS—21

Allott	Curtis	Hruska
Baker	Dodd	Jordan, Idaho
Bennett	Dole	McClellan
Boggs	Griffin	Miller
Cook	Gurney	Scott
Cooper	Hansen	Williams, Del.
Cotton	Holland	Young, N. Dak.

NAYS—49

Allen	Hollings	Pearson
Anderson	Hughes	Pell
Bayh	Inouye	Percy
Brooke	Jackson	Proxmire
Burdick	Javits	Randolph
Byrd, Va.	Long	Ribicoff
Byrd, W. Va.	Magnuson	Russell
Case	Mansfield	Saxbe
Church	Mathias	Schweiker
Cranston	McCarthy	Smith, Maine
Dominick	McGovern	Spong
Eagleton	McIntyre	Stennis
Eastland	Metcalf	Stevens
Ervin	Mondale	Thurmond
Fulbright	Nelson	Williams, N.J.
Hart	Packwood	
Hatfield	Pastore	

PRESENT AND GIVING LIVE PAIRS AS PREVIOUSLY RECORDED—2

Bible, for.
Ellender, for.

NOT VOTING—28

Aiken	Hartke	Smith, Ill.
Bellmon	Jordan, N.C.	Sparkman
Cannon	Kennedy	Symington
Fannin	McGee	Talmadge
Fong	Montoya	Tower
Goldwater	Moss	Tydings
Goodell	Mundt	Yarborough
Gore	Murphy	Young, Ohio
Gravel	Muskie	
Harris	Prouty	

So Mr. HRUSKA's motion to lay Mr. HUGHES' amendment on the table was rejected.

The PRESIDING OFFICER. The question now occurs on the amendment of the Senator from Iowa. On this question the yeas and nays have been ordered.

MERCHANT MARINE PROGRAM—CONFERENCE REPORT

Mr. LONG. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15424) to amend the Merchant Marine Act, 1936. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. SCHWEIKER). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

(For conference report, see House proceedings of Oct. 5, 1970, pp. 34877–34878, CONGRESSIONAL RECORD.)

Mr. LONG. Mr. President, I think it is fair to say that, from the Senate point of view, this was a very successful conference except for one item on which the Senate was unable to prevail. That is the item relating to the proposed continuation of the operation of the *Delta Queen*.

It is unfortunate from the Senate point of view that the House conferees were absolutely adamant on this matter and completely unyielding. They had the support of the Coast Guard, the Department of Transportation, and the Bureau of the Budget. On that item they were completely unyielding.

It was generally agreed that the House conferees, who are members of the appropriate committee and subcommittee in the House, would be willing to help us pass a bill to replace the *Delta Queen* and to provide a subsidy with which to do so. They were unwilling to yield to the Senate position on that amendment, however, because of several reasons.

With regard to the grandfather clause, with regard to the cargo preference, and with regard to the definition of foreign commerce, very important items, the Senate provisions prevailed. That is also true with regard to the St. Lawrence Seaway.

I see the Senator from Kentucky is present on the floor. I wish to say to him and to those others who feel as I do with regard to the *Delta Queen* amendment, that we did the best we could. However, that was one of the things on which we could not influence the House conferees.

Mr. GRIFFIN. Mr. President, I join the distinguished Senator from Louisiana (Mr. LONG), the chairman of the Merchant Marine Subcommittee of the Committee on Commerce and a member of the conference committee, in urging adoption of the conference report.

This is landmark legislation. It is the product of a legislative effort spanning several years. It represents delivery on one of the most important requests made by President Nixon as part of his legislative program.

In a special message to Congress in October 1969, President Nixon said:

> It is my hope and expectation that this program will introduce a new era in the maritime history of America, an era in which our shipbuilding and ship operating industries take their place once again among the vigorous, competitive industries of this Nation.

I share that hope of President Nixon as we prepare now to take this final step in the legislative process toward enactment of this historic legislation.

Mr. President, this legislation marks the most significant step for the Great Lakes-St. Lawrence Seaway since the opening of the Seaway in 1959.

This bill includes important provisions for the Great Lakes region because Senators and Congressmen of both parties from that area have worked very hard, and because this administration has provided commendable leadership and support.

In particular, I wish to commend the Maritime Administrator, Mr. Andrew Gibson, and the Administrator of the St. Lawrence Seaway Development Corp., Mr. David Oberlin, for the efforts to obtain fair treatment for the Seaway.

Mr. Gibson's support for provisions to include Great Lakes shipping industry within the scope of the Merchant Marine Act of 1936 was very helpful, His tour of the Great Lakes this past summer, the first such inspection ever by a U.S. Maritime Administrator, opened lines of communication between the Maritime Administration and Great Lakes shipping interests which, in the words of the Administrator, "have been virtually nonexistant" over the years.

The untiring efforts of Administrator Oberlin were particularly effective in securing adoption of the administration's proposal to cancel the interest on Seaway indebtedness.

Before summarizing some of the provisions of this bill which are of particular interest to the Great Lakes-St. Lawrence Seaway, I would like to focus briefly on the progress that has been achieved over the past decade and the potential for development in the future. Critics of the seaway sometimes point out that estimates of the volume of oversea trade forecast prior to construction of the seaway have not been realized. Although that is true, the growth in traffic that has occurred since the seaway opened in 1959 is very significant.

The annual overseas tonnage increased from 300,000 gross tons in the preseaway era to 14.6 million tons in 1967. In addition, the value of overseas trade during this period increased from $100 million to $1.6 billion. In fact, as Professor Hazard of Michigan State University has pointed out:

> The Seaway has been the fastest growing major trade route in the United States or Canada.

On the other hand, only about 3 percent of the foreign trade through the seaway is carried on U.S.-flag vessels. Furthermore, the value of cargo transported via the seaway each year is less than 18 percent of the value of all overseas exports originating in the Midwest region. While a substantial amount of military cargo shipped overseas by the Defense Department is generated in the immediate six-State area bordering the Great Lakes, in 1969 only about 4 percent of this cargo was shipped through the seaway. The lack of available American-flag service and the prohibition in the Military Cargo Preference Act against the use of any foreign vessel accounts for this situation.

What does the present legislation do to help realize this potential? First, the bill eliminates the longstanding inconsistency in the Merchant Marine Act of 1936 which excludes operators of U.S.-flag ships in foreign commerce on the Great Lakes from the operating-differential subsidy program.

Second, the bill includes Great Lakes ports within the policy declaration of the 1936 act which directs the Maritime Administrator to enter into contracts with private carriers so as to serve equitably the foreign trade requirements of all ports on the three major seacoasts. The lack of any development program for establishing an American Merchant Marine fleet on the Lakes has been particularly noticeable. Not only are operating and construction differential subsidies needed to encourage ship operators to serve Great Lakes ports, but up until recently no concern was evidenced with respect to the design of ships capable of traversing the Seaway locks. Some hopeful signs in the area of ship design, however, have been forthcoming from the Maritime Administration. Mr. Gibson has informed me that modifications have been made in the Maritime Administration's standardized ship design program which would permit at least two of the proposed vessels to meet the size limitations of the locks.

Third, the maritime legislation passed by Congress includes a provision which would permit operators of the Great Lakes carrier fleet to set aside earnings in a tax deferred fund for purposes of ship-construction and modernization. Such tax deferral privileges have been available to ocean carriers for over 30 years. The needs of the Great Lakes fleet are evident by the fact that the average age of the fleet is 43.8 years. In 1960, approximately 314 ships with a carrying capacity of 3.5 million gross tons were in existence on the Great Lakes. In 1970, there are only 193 vessels with a carrying capacity of 2.6 million gross tons still in existence.

Fourth, an amendment was added to H.R. 15424 which will cancel accrued interest of $22.4 million, as well as future interest obligations on the debt owed by the Seaway Corporation to the U.S. Treasury. Since the opening in 1959, all of the operating and maintenance costs have been paid out of toll revenues. In addition, $36.2 million in interest has already been paid back to the U.S. Treasury. During this period there have been

no appropriations by Congress for any activities of the Corporation.

The effect of the amendment will be to enable the United States, in negotiations with Canada, to press for keeping tolls at their present levels. Higher tolls would stifle shipping growth, reduce total toll revenues and push the Seaway further into debt. Such a restructuring of the debt obligations of the Seaway should also act as an inducement to Canada to follow suit. Even with this transformation of the Seaway obligation from an interest bearing to an interest free loan, there is still a heavier financial burden placed on this waterway than on any other waterway in the United States.

While this legislation is not a panacea for all the ills of the Great Lakes-St. Lawrence Seaway, it does provide a framework for achieving a much greater utilization of this important transportation artery. There are still other reforms, such as an extended shipping season, elimination of rate discrimination from connecting modes of transportation, more equitable administration of the cargo preference laws, as well as port development and informational programs designed to bring about a greater public awareness of the benefits of the Great Lakes-St. Lawrence Seaway.

I am confident that the challenge presented by this legislation will be met by those concerned in the Great Lakes region, and that this legislation will help significantly to further develop a strong, viable Seaway which, as Secretary Volpe has said, "is an essential part of the Nation's transportation system."

Mr. COTTON. Mr. President, as the senior Republican member of our Committee on Commerce I was one of the managers on the part of the Senate in the committee of conference on the bill, H.R. 15424. I now wish to express my personal support for the conference report and urge its adoption by the Senate.

In doing so, Mr. President, I would like to commend the distinguished chairman of our Committee on Commerce (Mr. MAGNUSON) and the chairman of our Subcommittee on Merchant Marine (Mr. LONG) for the commendable work which each did in asserting the position of the Senate. Largely owing to their efforts, we now have under final congressional consideration a workable legislative blueprint for the much-needed revitalization of the American maritime industry.

Mr. President, I suppose to many of my colleagues this is but one of many legislative proposals brought before them for consideration. Yet, for me this one, H.R. 15424, has a special significance and I cannot help but be a little bit nostalgic. This is truly a memorable occasion. It represents the final hurdle prior to presentation to President Nixon of a maritime program proposal which was the subject of his messages in October of last year. It has as its objective a goal for which many of us here in this body have worked long and hard over the past several years. Unfortunately, one who has done yeoman service in this effort is no longer with us—the late distinguished Senator from Alaska, Bob Bartlett.

Mr. President, I believe that all of my colleagues present in the Chamber today who were acquainted with Bob Bartlett will concede to his legislative expertise in the field of maritime affairs. During his tenure in office, and most particularly during the later years as chairman of the Subcommittee on Merchant Marine and Fisheries, he worked long and hard for the goal which we are about to attain today. Well do I recall that day in April in 1967 when as chairman of that subcommittee the late Senator Bartlett commenced an extensive hearing which would mark, in his words:

> The beginning of a process that, if successful, will have a profound effect upon the future of our merchant fleet.

Mr. President, today we are approaching the conclusion of that voyage on which we commenced under the leadership of Bob Bartlett. He has left us. But, it was his statesmanlike navigation which charted our course enabling us to successfully conclude the voyage. And, I believe that in future years this legislation on which we are about to place the last stamp of congressional approval will stand out among the many legislative achievements of Bob Bartlett as a hallmark.

I, therefore, deem it particularly appropriate, Mr. President, to conclude my remarks with the following words of the late Senator from the great State of Alaska:

> We must solve our maritime problems without further delay. Committing ourselves to seek an effective, equitable, and sound solution should provide sufficient common ground for success.

Mr. President, H.R. 15424 is that "common ground for success" alluded to by our dearly departed colleague. In his memory I am deeply honored to strongly urge adoption by the Senate of the United States of the conference report on H.R. 15424.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

RESOLUTION DIRECTING THE CLERK OF THE HOUSE OF REPRESENTATIVES TO MAKE A CORRECTION IN THE ENROLLMENT OF H.R. 15424

Mr. LONG. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 768.

The PRESIDING OFFICER laid before the Senate House Concurrent Resolution 768, which was read as follows:

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 15424) to amend the Merchant Marine Act, 1936, the Clerk of the House of Representatives shall add at the end thereof the following new section:

"SEC 44. This Act may be cited as the "Merchant Marine Act of 1970'."

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution (H. Con. Res. 768) was considered and agreed to.

NEW MARITIME PROGRAM IS A TRIBUTE TO SENATOR E. L. (BOB) BARTLETT

Mr. MAGNUSON. Mr. President, Congress has completed action on a vast new program to revitalize the U.S. merchant marine. This is a goal which was vigorously pursued by many of us here in the Senate for a number of years.

Throughout these many years we have worked and fought to develop a new maritime program many Senators and Congressmen have labored toward that end, but no man worked harder for the American merchant marine and to achieve a new maritime program than the late Senator E. L. "Bob" Bartlett.

As chairman of the Merchant Marine Subcommittee of the Senate, Bob Bartlett devoted the last 2 years of his life to an intensive effort to revitalize the American merchant marine. The program we have approved is substantially identical to the program that Bob Bartlett advocated and developed during the years he chaired the Merchant Marine Subcommittee. It is his leadership, it is his devotion, and it is his goal that has been realized by the Congress.

REPRESENTATION OF CERTAIN DEFENDANTS IN CRIMINAL CASES

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1461.

The PRESIDING OFFICER (Mr. SCHWEIKER) laid before the Senate the amendments of the House of Representatives to the bill (S. 1461) to amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States, which were:

Page 2, line 3, after "title)" insert "or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor".

Page 2, line 4, after "arrest," insert "when such representation is required by law,".

Page 2, line 6, strike out all after "or.", down through and including "counsel.", in line 8, and insert "(4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel.".

Page 3, line 10, after "title)", insert "or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor".

Page 4, strike out line 25, and insert "exceeding $30 per hour for time expended in court or before a United States magistrate and $20 per hour for time reasonably expended out of court, or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district. Such attorney".

Page 10, line 4, strike out "The organization" and insert "An organization for a district or part of a district or two adjacent districts or parts of districts".

Page 10, line 9, after "served.", insert "Nothing contained herein shall be deemed to authorize more than one Federal Public Defender within a single judicial district."

Page 10, line 20, strike out all after "service," down through and including "Com-

pensation" in line 21, and insert "full-time attorneys in such number as may be approved by the Judicial Council of the Circuit and other personnel in such number as may be approved by the Director of the Administrative Office of the United States Courts. Compensation".

Page 11, line 4, after "districts.", insert "Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law."

Page 11, lines 8 and 4, strike out "to the President" and insert ", similarly as under title 28, United States Code, section 605, and subject to the conditions of that section,".

Page 12, after line 7, insert:

"(c) A new subsection (l) is added as follows:

"(l) APPLICABILITY IN THE DISTRICT OF COLUMBIA.—The provisions of this Act, other than subsection (h) of section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

Page 12, line 11, strike out "the first section" and insert "section 1".

Page 12, strike out lines 14 through 18, inclusive, and insert:

SEC. 3. The amendments made by section 1 of this Act shall become effective one hundred and twenty days after the date of enactment.

Mr. ERVIN. Mr. President, I am extremely gratified that the House has completed action on S. 1461, a bill to amend and perfect the Criminal Justice Act of 1964.

The Criminal Justice Act was adopted 6 years ago in recognition of the Government's responsibility to insure that defendants in criminal cases were represented by legal counsel and that that representation was to be real and not merely token. The act established a system of appointment of private attorneys to act as defense counsel and provided compensation for both court time and pretrial preparation. The 6 years of its operation are generally if not unanimously considered to be a demonstration of the success and the validity of public compensation for appointed defense counsel.

Despite the substantial success of the 1964 act, a review of the legislation by Congress and by the legal profession has demonstrated the necessity of certain revisions and the desirability of an expansion of the original legislation. Almost 2 years ago to this very day, Senator HRUSKA and I introduced the first proposals to revise the act. Following hearings by the Constitutional Rights Subcommittee this legislation was itself revised and perfected and late this past spring our work was completed when the Senate passed S. 1461.

This legislation makes three major changes in the original scheme. First, it expands the scope of representation for which compensation is authorized to be coextensive with the legal and constitution requirements of counsel in criminal and quasi-criminal proceedings. By "quasi-criminal" proceedings I mean those which are technically "civil" in name but which are related to or are a part of the legal process of determining an individual's fate following a charge of a criminal violation. Second, it modernizes the scale of compensation to make it more realistic in terms of present-day costs of legal compensation. Third, it goes beyond the original concept of having private attorneys provide representation by giving support to community defender programs and by authorizing the creation of Federal public defender offices. The creation of these offices means that for the first time the Government is assuming full responsibility for legal defense of citizens in the same manner as it now has responsibility for prosecution.

For many years doubts and discomfort accompanied the idea of a government defense function. It was thought that this would create a conflict of interest. For some, it would interfere with the Government's main responsibility to prosecute. For others, it was feared the defense function would be subordinate to prosecution-minded Government. After much thought and consideration over the past 6 years, these doubts have been put to rest. The language in S. 1461 which authorizes Government defender offices is specially designed to insure that those who defend an accused will perform the responsibilities no less conscientiously than those who prosecute. The defender organizations are meant to be independent from the Justice Department and, no less important, from the judiciary in all but minor administrative matters.

I am extremely pleased that the House has made no changes of a substantial nature and I wish to join with the Senator from Nebraska (Mr. HRUSKA) in urging that the Senate accept the House amendments.

The House amendments are for the most part merely technical or perfecting. Only a few of them require comment. First, the House felt that explicit mention should be made of juvenile delinquency cases. It was our feeling that juvenile cases would be covered by the language in section 1(a)(4) which authorizes counsel whenever required by the Constitution or Federal law. This House amendment merely makes explicit what we felt was implicit in the legislation. It does not, in my judgment, narrow the intent of the legislation to provide representation for juveniles in any proceeding of a criminal-like nature where they are accused of wrongdoing.

Second, the House, at the suggestion of the Justice Department, added the words "when required by law" to the authorization for representation for persons under arrest. Although this is a narrowing of the Senate intent, under present law the gap in time between arrest and when the constitutional right to counsel attaches is no longer very great. I myself would have preferred that this limitation not be added, but I am content to defer to the wishes of the other body.

Third, the Senate language would have permitted the expansion of the act automatically as new Federal legislation or judicial decision expanded the right to counsel. Again, at the insistence of the Justice Department, the House added narrowing language such that a person must face loss of liberty before he has a right to compensated counsel under this provision. The reason for this narrowing language is a fear that the Criminal Justice Act may be used to compensate counsel should Congress legislate a right to representation in civil cases. So far, Congress has permitted but not required the appointment of counsel in certain noncriminal proceedings. Should our notions of justice develop in the future such that Congress feels it necessary to give persons in civil proceedings a right to appointed counsel, I have no doubt that a system of compensation similar to or perhaps even identical to the Criminal Justice Act will be created. This, however, is pure speculation and I am content to defer to the supercautious vision of the Department. It is my understanding, however, that the intention of this language does not in any way restrict an individual's right to compensated counsel in any proceeding where the loss of liberty or the threat of a restriction on liberty is present. The intent to provide coverage for mental commitment proceedings of a civil nature is not affected by this new language since a loss or a restriction of liberty is involved in these cases.

Fourth, it was the committee's judgment that pretrial preparation was as important as the time an attorney spends in court during the trial. For this reason, the Senate made no distinction in compensation between these two facets of legal work. The House, however, has chosen to retain the distinction originally made in the 1964 act by giving increased compensation for time spent in the courtroom. The House also added an escalator clause which permits these rates to increase as the minimum rates of legal assistance may increase in various parts of the country.

There is an advantage of permitting the rates to increase as inflation or other factors in time tend to make the legislative rates less realistic. It also permits rates to vary in different parts of the country and this flexibility may also be an advantage. On the other hand, this change means that local bar associations and Judicial Councils will be setting the rates and not Congress. I do not favor this kind of delegation of congressional responsibility. The maximum rates set out in this legislation are generous indeed. If in time they need be raised, then I believe the legal profession should address Congress for an increase and at that time give an accounting of the way it has discharged its responsibilities under the act. Despite, however, my disapproval of this language, which I hope will be exercised rarely if at all, I do not believe the issue is serious enough to delay final action on this bill.

These are the only changes made by the House which I consider require comment. Once again, I would like to commend the Senator from Nebraska (Mr. HRUSKA), the Senator from Arizona (Mr. GOLDWATER), the Senator from Massachusetts (Mr. KENNEDY), Prof. Dallin Oaks of the University of Chicago Law School, Judge Harvey Johnson of the Eighth Circuit Court of Appeals, Maynard Toll of the National Legal Aid and Defender Association, Gen. Charles Decker, director of the National Defender project, and all the other persons who have worked so hard and so diligently on this legislation. It is my judgment that

legislation such as this—thoughtfully and carefully worked out—is the kind of legislation which makes a real impact on the problem of crime. Although it has not received the attention of other anti-crime proposals in Congress, it is at least as important as any of the others that have come before us.

Mr. President, for these reasons I join the distinguished Senator from Nebraska, the other coauthor of the amendment, in urging the Senate to concur in the House amendments.

Mr. HRUSKA. Mr. President, the other body has passed by a vote of 277 to 21 S. 1461, amended, a bill to amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States. The Senate previously approved this bill on April 30 of this year. I agree with the Senator from North Carolina (Mr. ERVIN) and the chairman of the Committee on the Judiciary (Mr. EASTLAND), that the Senate concur in the House amendments to this bill and send the measure to the President for approval.

The purpose of this bill is to improve and expand the operation of the Criminal Justice Act of 1964. That Act was designed to make more effective the constitutional right to counsel in Federal criminal cases by providing compensated counsel and other defense services to those who cannot afford to obtain their own. The act has been in effect for nearly 5 years, and the experience gained demonstrated its great success as well as the need for both its expansion and improvement. S. 1461 meets this need.

Mr. President, S. 1461 is a milestone in the efforts of the Congress, the bench and the bar to bring the Federal law enforcement system closer to the ideal of assuring every citizen the full benefit of the sixth amendment.

As approved by the Senate S. 1461 expanded the coverage of the 1964 act to cover the criminal process from the arrest stage to appeals, postconviction proceedings, and ancillary proceedings related to the criminal trial. The act was thus made coextensive with the sixth amendment right to counsel as now interpreted. It also allowed for expansion of coverage as judicial decisions based on the sixth amendment and as Federal statutes establishing right of counsel create new instances where counsel is considered essential to protect a person's liberty but where the person may be too impoverished to pay for counsel and defense services.

The bill also provided for the creation of Federal defender offices operating under the guidance of the district and appellate courts, but independent of both the Federal judicial and prosecution systems. The defender system has two important features: First, participation by the private bar is required in a substantial proportion of the criminal cases in each court. Second, provision is made for community defender organizations, supported by the local community, to operate in lieu of, and in conjunction with, the Federal offices.

S. 1461, as approved by the Senate, also increased the hourly rate to $30 an hour and increased the total compensation limits available to attorneys providing representation under the act. A number of other changes have also been made in the 1964 act.

Widespread support for these provisions was manifest at the hearings on S. 1461 conducted in 1969 by the Constitutional Rights Subcommittee. Not one single witness questioned the desirability of the amendments proposed in the bill.

The House Judiciary Committee made several changes in the language of the Senate bill, most of which are technical amendments designed to clarify the scope of the bill with regard to the defense of certain classes of criminal cases. The one major substantive change concerns the fee schedule to be paid to private attorneys who undertake to represent indigent defendants. The Senate bill provided a flat maximum of $30 per hour for reasonable in court and out of court work. The House altered this schedule to a maximum of $30 for in court work and a maximum of $20 for out of court work, with the proviso that the judicial councils of the circuits may alter these maximums up to the minimum rates set by the local bar association. Comparably, where bar association minimums are lower than the $30 to $20 maximums, these bar association minimums should serve to remind the judicial council that in setting approximate rates within the $30 to $20 maximums, the lower bar association rates are relevant.

The Senate bill was, Mr. President, a better bill in many respects in my estimation than the one approved by the other body. However, it is very late in the year, and these improvements in the 1964 act are much needed.

I might say that these improvements and the amendments proposed are the result of very intensive work on the part of the committee, emanating from the Judicial Conference, as well as some very distinguished members of the bar.

The administration has indicated that it is disposed to accept the House-passed bill. I have discussed the situation with my distinguished colleague from North Carolina and we have agreed that it would be best for the Senate to accept the bill now before us, as amended, so that we can get to the very crucial business of seeing that all of our citizens have the protection of counsel afforded them by the sixth amendment to the Constitution. For these reasons I ask that the Senate concur in the House amendments and that we approve the bill and send it on to the President for his signature.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur in the House amendments.

The motion was agreed to.

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION BILL, 1971 — CONFERENCE REPORT

Mr. McCLELLAN. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 17575) making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending June 30, 1971, and for other purposes.

I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

(For conference report, see House proceedings of September 30, 1970, p. 34330, CONGRESSIONAL RECORD.)

Mr. McCLELLAN. Mr. President, I shall make only a few brief remarks.

The total of appropriations allowed is $3,108,074,500. This sum is $143,125,500 below the total budget estimates, is $14,006,000 below the total sum recommended by the Senate, and $1,118,000 above the total allowed by the House.

In my judgment, it is a fairly good bill; the amounts provided for some items are not entirely in accordance with my personal best judgment; however, in the main there will be adequate funds to meet necessary expenses of the three departments, the Judiciary, and related agencies in fiscal year 1971. As Members know, the rate of expenditures since July 1 has been under a continuing resolution of Congress, and will be until such time as the pending bill becomes law.

Major items that were added by the Senate and were approved, reduced, or denied in conference are the following:

For the Department of State, the conference approved the $1,100,000 for protection costs of our overseas officials and $650,000 for the Government's contribution to the retirement fund; also, the reduction of $3,700,000 which represented the undisbursed portion of the amount to be paid as the U.S. assessment for membership in the International Labor Organization, an item included in the appropriation "Contributions to international organizations." Disapproved was the $100,000 Senate recommendation for the International Pacific Salmon Commission for the U.S. share of the first year's costs of the construction project on the Nadina River.

For the Department of Justice, approval was given to the $2,750,000 Senate recommendation to enable the Federal Bureau of Investigation to reinstitute the processing of non-Federal applicant fingerprint program. Also approved was $350,000 of the $550,000 recommendation for the Bureau of Prisons to proceed with the design and planning of the specialized medical facility at Butner, N.C.

For the Department of Commerce, planning, technical assistance, and research activities of the Economic Development Administration, the sum of $20,795,000 was approved instead of $21,390,000 recommended by the Senate and $20,200,000 proposed by the House.

And, for the regional development programs, the conference agreed to the sum of $39,000,000 instead of $45,000,000, the Senate recommendation, and $29,000,-

000 allowed by the House. The allowance will materially assist in the financing of essential programs planned this fiscal year in the various designated areas, and in addition will provide $600,000 for administrative costs of the planned new Upper Missouri and the Mid-South Regional Economic Development Commissions that the Appropriations Committee and the Senate agreed should be initially funded this year.

Mr. MANSFIELD. Mr. President, will the Senator yield right there?

Mr. McCLELLAN. I yield.

Mr. MANSFIELD. The Senator from Arkansas, who is chairman of the committee and of the conferees, is aware of the language inserted in the RECORD at page 35166 by the chairman of the Appropriations Subcommittee in the House, Mr. ROONEY; is he not?

Mr. McCLELLAN. Yes.

Mr. MANSFIELD. Does the Senator care to read it?

Mr. McCLELLAN. The Senator has it before him.

The language inserted by the chairman for his conferees reads:

> In connection with the item for the Regional Action Planning Commissions we have no objection to the use of $600,000 to equally fund the Federal share of the administrative costs of the two planned commissions; namely, the Mid-South and the Upper Missouri Regional Economic Development Commissions.

I may say that the Senate provided $300,000 for each of these commissions, and it was to come out of the $29 million that had been allowed by the House. We restored the full amount of $45 million. Then the conferees agreed on a total of $39 million. Thus, these items were intended not to add funds but to make them available out of the total $39 million appropriated for this purpose, so that they might be applied to those two regional economic development commissions.

Mr. MANSFIELD. Mr. President, will the Senator yield for the purpose of making the record straight?

Mr. McCLELLAN. I yield.

Mr. MANSFIELD. Does the appropriation of $39 million for the Regional Development Commissions include any funds to cover the Federal share of administrative costs for the planned Upper Missouri Regional Economic Development Commission?

Mr. McCLELLAN. Yes; it includes $300,000 for that regional commission and also $300,000 for the Mid-South Regional Commission.

Mr. MANSFIELD. Will the Senator yield further?

Mr. McCLELLAN. I yield.

Mr. MANSFIELD. I appreciate the chairman's assurance that $300,000 is included for the Upper Missouri Commission, however, in order that the record will be crystal clear, am I correct in my understanding that the $6 million reduction made by the conferees from the Senate recommendation of $45 million, will in no way affect the allocation of $300,000 for this planned Commission?

Mr. McCLELLAN. It will in no way affect it. The $6 million was to come out of whatever amount was appropriated. The House conferees interposed no objection whatever to it. That was the intent of the conferees, and that is what we have undertaken to do.

It is expected, I might say, that the Secretary of Commerce will give favorable consideration both to the expressions on the part of the House conferees and to the expression that we make here this afternoon about it.

But there was no question raised about it at any time.

Mr. MANSFIELD. Mr. President, may I say that the Secretary of Commerce, Mr. Stans, has been somewhat reluctant, and perhaps understandably, but now he has justification, and the distinguished Senator will recall, I am sure, that the Senate report specially indicated that of the $45 million recommended for this appropriation, the sum of $600,000 was earmarked to finance the first year's administrative costs for the Upper Missouri and the Mid-South Commissions.

Mr. McCLELLAN. That is correct; and the only action taken by the conferees was to reduce the total amount of the appropriation, not on these items, but on the overall appropriation for the line items.

Mr. MANSFIELD. I thank the Senator.

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

Mr. McCLELLAN. I yield to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, the able Senator from Arkansas will recall that when I brought from the Committee on Public Works the original Appalachian Regional Development Act, there was not only an intense and knowledgeable interest by the Senator from Arkansas, who presents this conference report, but there was also the recognition on my part and on the part of many members of the Committee on Public Works and of other Senators that the Appalachian program was moving because the projects had been clearly defined over a period of study of almost 2 years. I made the promise explicitly, as we debated the matter, that other regional development commissions seeking similar authority, would be given the attention of the authorizing committee just as quickly as possible.

So we have done that in the Committee on Public Works, keeping the promise made originally at the time the original Appalachian Regional Development Commission was brought into being by law.

I am not attempting to praise the Committee on Public Works especially, or my own activity at that time, but I think it is very important for us always to realize that within the Senate, we cannot always do the job for everyone on the same date. But we can recognize the validity of other regions of this country, as we did originally, and follow through with the authorizations.

I commend the Senator from Arkansas for doing as he has done with his conferees, recognizing that the programs in these five regional commissions can be of course, as complete as the program, which has been highly successful, in the Appalachian region to date.

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

Mr. McCLELLAN. In a moment. I wish to thank the Senator from West Virginia, who has stated the background and the history of this matter absolutely correctly. His committee, as he indicated, or promised, if he wishes to put it in stronger language, at the time the Appalachian region was considered, assured us then that these other regions would have proper consideration and be given legislative attention. He has followed through on that, and we have the authorization in these other regions, which do merit comparable recognition to what the Appalachian region received, and are now in a position to be accorded that recognition and financing, as has been true for the Appalachian region. Thus the whole country, in this area, is moving forward in this particular field of developing our national resources and dealing with the less developed economic areas throughout the country.

Mr. RANDOLPH. Would the Senator from Arkansas indulge me one further comment?

Mr. McCLELLAN, Yes, indeed.

Mr. RANDOLPH. I think it is important also to state that it was our desire, in this developing partnership of the State and Federal governments, as the Senator from Arkansas and other interested Senator well know, that there was not to be, on the part of the Federal Government, a senior partnership; it was to be a true partnership between the States and the Federal Government, in the States and the areas within the States in which these commissions were to operate, and in the Committee on Public Works we moved as promptly and yet as thoroughly as possible in sending to the Senate the nominations of the Federal cochairmen for this commission and the other commissions that have been created.

Mr. McCLELLAN. Again I want to say, for the RECORD, that I thank the distinguished Senator from West Virginia, and I certainly express my appreciation as a Member of this body, and also as a Senator from my State, for the expeditious attention and consideration that he and his committee have given to the requests of myself and my colleague from Arkansas, and to the needs of our people with respect to this program. I indeed thank him.

I also thank the distinguished majority leader for the contribution he made in helping to develop this issue.

I now yield to the distinguished Senator from Nebraska.

Mr. HRUSKA. Mr. President, I wish to say I am grateful for the recounting of the legislative history of these commissions that was afforded us by the chairman of the Committee on Public Works. It was the recollection of that history by the Senator from Arkansas and this Senator which led to this additional amount for the initial funding of the Mid-South Regional Economic Development Commission and the Upper Missouri Regional Economic Development Commission. We wished every suc-

cess to the funding which had been accorded other regions and other commissions, but that did not help us, Mr. President, insofar as getting even the initial funding for these commissions in other areas, which are not only fully as deserving, but more importantly, fully as needful of the activities of such a commission; and I should like to take this occasion to express my appreciation for what the chairman of the Public Works Committee has done, as well as the contribution made by the chairman of our Appropriations Subcommittee on Public Works, particularly, to see that this would eventuate.

Mr. McCLELLAN. I thank the distinguished Senator from Nebraska for his cooperation and his work on the Appropriations Committee, not only with respect to items in this category, but as to all that are covered by this particular appropriation bill. His cooperation has been substantial and most valuable; and by reason thereof, with other members of our committee, we have been able to save considerably under the budget recommendation.

It is my hope that the Secretary of Commerce will approve the Senate recommendation.

The conference agreed to the Senate recommendation of $7,235,000, an increase of $200,000 over the House allowance, for the Business and Defense Services Administration in order to provide for additional positions needed in the textile tariff negotiations. For salaries and expenses, international activities, the conference approved the House allowance of $21,500,000 instead of $22,000,000 recommended by the Senate. And for the office of field services, the conferees sustained the House allowance of $5,851,000 instead of $5,951,000 recommended by the Senate.

For salaries and expenses of the foreign direct investment program, the conference approved the sum of $2,750,000 instead of $3 million recommended by the Senate and $2,500,000 allowed by the House. For the newly established National Industrial Pollution Control Council, the conference committee approved the $300,000 recommendation of the Senate.

For the Environmental Science Services Administration, the sum of $140,713,000 was agreed to by the conferees instead of $141,426,000 recommended by the Senate and $140 million by the House. The $713,000 increase provided over the House allowance will help finance the initiation of river and flood forecasting services in critical areas of the United States, provide for a river forecast service center for the Lower Mississippi River Valley, and afford assistance to the air pollution forecast program. And, in the facilities, equipment, and construction programs of ESSA, the conference agreed to the sum of $4,365,000, an increase of $115,000 over the House allowance of $4,250,000 and a reduction of $200,000 below the Senate recommendation of $4,565,000. For the appropriation Research and Technical Services, National Bureau of Standards, the conference agreed to $42,050,000 instead of $42,350,000 recommended by the Senate and $41,750,000 allowed by the House.

Offsetting the Commerce Department increases agreed to by the conferees were the two decreases proposed by the Senate to the House allowances, one in the amount of $5,721,000 that related to the 19th decennial census appropriation, and the other, a reduction of $12 million from the House allowance of $199,500,000 to provide instead a total of $187,500,000 for ship construction.

With respect to the research and development program of the Maritime Administration, and the language proposed by the Senate to provide $1,700,000 for initial layup of the NS *Savannah* instead of the House amendment to provide $4 million, for continued operation of the ship, it was agreed by the conference committee to delete such provisions recommended by both Houses. The effect of this agreement is that the conference committee has made no specific directive as to the continued operation or layup of the NS *Savannah* in fiscal 1971.

For the judiciary branch, the conferees agreed to the Senate recommendation for a net increase of $2,914,999 above the House allowances and which related to the implementation of the Federal Magistrates Act this fiscal year.

Under the heading of Related Agencies, major changes concerned the following:

For expenses of the Equal Employment Opportunity Commission, the conference approved $15,485,000 instead of $14,313,000 allowed by the House and $19 million recommended by the Senate; and for salaries and expenses of the Small Business Administration the House allowance of $18,950,000 was agreed to instead of $19,950,000, the Senate recommendation.

The Special Representative for Trade Negotiations was allowed the Senate recommendation of $597,000 instead of $550,000 provided by the House.

For Special International Exhibitions of the U.S. Information Agency, the conference committee agreed to the sum of $4,033,000 instead of $3,500,000 allowed by the House and $4,566,000 recommended by the Senate. The $533,000 increase provided over the House allowance will be spent on trade fairs and exhibitions planned in Eastern Europe.

I move the adoption of the conference report.

The PRESIDING OFFICER (Mr. SCHWEIKER). The question is on agreeing to the conference report.

The report was agreed to.

The PRESIDING OFFICER. The clerk will state the amendment in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 23 to the aforesaid bill, and concur therein with an amendment, as follows:

"Omit the matter stricken by the Senate amendment, omit the matter inserted by the Senate amendment, and on page 31, line 21, of the House engrossed bill, strike out [. of which], and insert: ': *Provided*,'"

Mr. McCLELLAN. Mr. President, I move that the Senate concur in the amendment of the House of Representatives to the amendment of the Senate, No. 23. That was a technical amendment, and this procedure is necessary.

The motion was agreed to.

Mr. McCLELLAN. Mr. President, I submit a summary of the bill and ask unanimous consent that it be printed in the RECORD.

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

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1970 AND THE BUDGET ESTIMATES FOR FISCAL YEAR 1971

PERMANENT NEW BUDGET (OBLIGATIONAL) AUTHORITY—TRUST FUNDS

[Becomes available automatically under earlier, or "permanent" law without further, or annual, action by the Congress. Thus, these amounts are not included in the accompanying bill]

Agency and item	New budget (obligational) authority, 1970	Budget estimates of new (obligational) authority, 1971	Increase (+) or decrease (−)
(1)	(2)	(3)	(4)
DEPARTMENT OF STATE			
Educational exchange fund	$353,000	$353,000	
International center, Washington, D.C.	1,020,000		−$1,020,000
Payment to the Republic of Panama	1,930,000	1,930,000	
Total, Department of State	3,303,000	2,283,000	−1,020,000
DEPARTMENT OF COMMERCE			
Maritime Administration:			
Operating-differential subsidies	213,738,000	176,000,000	−37,738,000
State marine schools	1,415,000	1,348,000	−67,000
Total, Department of Commerce	215,153,000	177,348,000	−37,805,000

Footnotes at end of table.

Agency and Item	New budget (obligational) authority, 1970	Budget estimates of new (obligational) authority, 1971	Increase (+) or decrease (−)
(1)	(2)	(3)	(4)
SMALL BUSINESS ADMINISTRATION			
Payment of participation sales insufficiencies	$5,872,000	$4,681,000	−$1,191,000
Grand total, permanent new budget (obligational) authority, Federal funds	224,328,000	184,312,000	−40,016,00
DEPARTMENT OF STATE			
Foreign Service retirement and disability fund	19,329,000	16,760,000	−2,569,000
Miscellaneous permanent appropriations	620,000	184,000	−436,000
Gifts and bequests, National Commission on Educational, Scientific, and Cultural Cooperation	54,000		−54,000
Educational exchange trust funds	310,000	310,000	
Total, Department of State	20,313,000	17,254,000	−3,059,000
DEPARTMENT OF COMMERCE			
General administration:			
Gifts and bequests	494,000	65,000	−429,000
Special statistical work	2,000	2,000	
Office of Business Economics: Special statistical work	25,000	25,000	
Bureau of the Census: Special statistical work	3,600,000	3,030,000	−570,000
Regional action planning commissions	7,581,000	11,887,000	+4,306,000
Business and Defense Services Administration: Special statistical work	13,000	12,000	−1,000
International activities: Contributions, educational and cultural exchange	1,625,000	1,961,000	+336,000
Environmental Science Services Administration: Special statistical work	181,000	180,000	−1,000
National Bureau of Standards: Clearinghouse for technical information	3,100,000	3,400,000	+300,000
Total, Department of Commerce	16,621,000	20,562,000	+3,941,000
THE JUDICIARY			
Judicial survivors' annuity fund	1,500,000	1,540,000	+40,000
Operation of the Legal Aid Agency for the District of Columbia	700,000	1,100,000	+400,000
Total, the Judiciary	2,200,000	2,640,000	+440,000
RELATED AGENCIES			
American Battle Monuments Commission: Contributions	7,000	7,000	
U.S. Information Agency: Trust funds	152,000	7,000	−145,000
Total, related agencies	159,000	14,000	−145,000
Grand total, permanent new budget (obligational) authority, trust funds	39,293,000	40,470,000	+1,177,000

Note.—Some items are indefinite in amount, and thus are subject to reestimation.

ADMINISTRATIVE EXPENSES OF GOVERNMENT CORPORATIONS

[Limitation on amounts of corporate funds to be expended]

Agency and item	New budget (obligational) authority, fiscal year 1970	Budget estimates of new (obligational) authority fiscal year 1971	New budget (obligational) authority recommended in House bill	Amount recommended by Senate Committee
(1)	(2)	(3)	(4)	(5)
DEPARTMENT OF JUSTICE				
Federal Prison Industries, Incorporated	($3,667,000)	($5,204,000)	($4,854,000)	($4,854,000)

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1970 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1971

[Note—All amounts are in the form of appropriations unless otherwise indicated]

Item	New budget (obligational) authority, fiscal year 1970	Budget estimate of new (obligational) authority, fiscal year 1971	New budget (obligational) authority, recommended in House bill	Senate bill	Conference action
(1)	(2)	(3)	(4)	(5)	(6)
TITLE I—DEPARTMENT OF STATE ADMINISTRATION OF FOREIGN AFFAIRS					
Salaries and expenses	$220,495,600	$222,300,000	$220,100,000	$221,850,000	$221,850,000
Representation allowances	993,000	993,000	993,000	993,000	993,000
Acquisition, operation, and maintenance of buildings abroad	13,277,000	14,300,000	14,300,000	14,300,000	14,300,000
Acquisition, operation, and maintenance of buildings abroad (special foreign currency fund)	2,186,000	6,690,000	6,500,000	6,500,000	6,500,000
Emergencies in the diplomatic and consular service	1,600,000	2,100,000	2,100,000	2,100,000	2,100,000
Total, administration of foreign affairs	238,551,600	246,383,000	243,993,000	245,743,000	245,743,000
INTERNATIONAL ORGANIZATIONS AND CONFERENCES					
Contributions to international organizations	131,437,000	144,611,000	144,611,000	140,911,000	140,911,000
Missions to international organizations	4,320,000	4,384,000	4,384,000	4,384,000	4,384,000
International conferences and contingencies	2,150,000	1,913,000	1,850,000	1,850,000	1,850,000
Total, international organizations and conferences	137,907,000	150,908,000	150,845,000	147,145,000	147,145,000
INTERNATIONAL COMMISSIONS					
International Boundary and Water Commission, United States and Mexico:					
Salaries and expenses	981,000	1,005,000	990,000	990,000	990,000
Operation and maintenance	2,475,000	2,485,000	2,475,000	2,475,000	2,475,000
Construction	400,000	4,200,000	4,200,000	4,200,000	4,200,000
American sections, international commissions	603,000	613,000	613,000	613,000	613,000
International fisheries commissions	2,400,500	2,566,000	2,505,800	2,605,800	2,505,800
Total, international commissions	6,859,500	10,869,000	10,783,800	10,883,800	10,783,800

Footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1970 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1971—Continued

[Note—All amounts are in the form of appropriations unless otherwise indicated]

Item	New budget (obligational) authority, fiscal year 1970	Budget estimate of new (obligational) authority, fiscal year 1971	New budget (obligational) authority, recommended in House bill	Senate bill	Conference action
(1)	(2)	(3)	(4)	(5)	(6)
EDUCATIONAL EXCHANGE					
Mutual educational and cultural exchange activities	$32,125,000	$40,000,000	$36,500,000	$36,500,000	$36,500,000
English language teaching program in Poland (special foreign currency program)		800,000			
Center for cultural and technical interchange between East and West	5,260,000	5,474,000	5,260,000	5,260,000	5,260,000
Total, educational exchange	37,385,000	46,274,000	41,760,000	41,760,000	41,760,000
Total, title I, Department of State	420,703,100	454,434,000	447,381,800	445,531,800	445,431,800
TITLE II—DEPARTMENT OF JUSTICE					
LEGAL ACTIVITIES AND GENERAL ADMINISTRATION					
Salaries and expenses, general administration	8,134,000	9,298,000	8,598,000	8,598,000	8,598,000
Salaries and expenses, general legal activities	30,264,000	33,595,000	33,400,000	33,400,000	33,400,000
Salaries and expenses, Antitrust Division	9,761,000	10,397,000	10,250,000	10,250,000	10,250,000
Salaries and expenses, U.S. attorney and marshals	51,862,000	54,585,000	54,365,000	54,365,000	54,365,000
Fees and expenses of witnesses	5,500,000	5,500,000	5,500,000	5,500,000	5,500,000
Salaries and expenses, Community Relations Service	3,307,000	4,995,000	4,300,000	4,300,000	4,300,000
Total, legal activities and general administration	108,828,000	118,370,000	116,413,000	116,413,000	116,413,000
FEDERAL BUREAU OF INVESTIGATION					
Salaries and expenses	250,310,000	257,485,000	257,485,000	260,235,000	260,235,000
IMMIGRATION AND NATURALIZATION SERVICE					
Salaries and expenses	102,963,000	111,980,000	111,480,000	111,480,000	111,480,000
FEDERAL PRISON SYSTEM					
Salaries and expenses, Bureau of Prisons	79,409,000	88,380,000	86,100,000	86,100,000	86,100,000
Buildings and facilities	5,440,000	27,350,000	21,800,000	22,350,000	22,150,000
Support of U.S. prisoners	8,750,000	9,500,000	9,500,000	9,500,000	9,500,000
Total, Federal prison system	93,599,000	125,230,000	117,400,000	117,950,000	117,750,000
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION					
Salaries and expenses	268,000,000	480,000,000	480,000,000	480,000,000	480,000,000
BUREAU OF NARCOTICS AND DANGEROUS DRUGS					
Salaries and expenses	27,547,000	34,445,000	34,445,000	34,445,000	34,445,000
Total, title II, Department of Justice	851,247,000	1,127,510,000	1,117,223,000	1,120,323,000	1,120,323,000
TITLE III—DEPARTMENT OF COMMERCE					
GENERAL ADMINISTRATION					
Salaries and expenses	5,920,000	6,500,000	6,065,000	6,065,000	6,065,000
OFFICE OF BUSINESS ECONOMICS					
Salaries and expenses	3,409,000	4,050,000	3,790,000	3,790,000	3,790,000
BUREAU OF THE CENSUS					
Salaries and expenses	19,641,000	22,724,000	21,500,000	21,500,000	21,500,000
Nineteenth Decennial Census	155,572,000	50,279,000	45,000,000	39,279,000	39,279,000
1972 census of governments	200,000	320,000	320,000	320,000	320,000
1972 economic censuses		1,400,000	1,200,000	1,200,000	1,200,000
Modernization of computing equipment		3,000,000	3,000,000	3,000,000	3,000,000
Survey of population change		200,000			
1967 economic censuses	3,769,000				
Total Bureau of the Census	179,182,000	77,923,000	71,020,000	65,299,000	65,299,000
ECONOMIC DEVELOPMENT ADMINISTRATION					
Development facilities	174,500,000	162,800,000	160,000,000	160,000,000	160,000,000
Industrial development loans and guarantees	[1] 50,000,000	56,400,000	50,000,000	50,000,000	50,000,000
Planning, technical assistance, and research	[2] 27,000,000	22,200,000	20,200,000	21,390,000	20,795,000
Operations and administration	[2] 20,621,000	21,600,000	21,100,000	21,100,000	21,100,000
Total, Economic Development Administration	272,121,000	263,000,000	251,300,000	252,490,000	251,895,000
REGIONAL ACTION PLANNING COMMISSIONS					
Regional development programs	(*)	45,000,000	29,000,000	45,000,000	39,000,000
BUSINESS AND DEFENSE SERVICES ADMINISTRATION					
Salaries and expenses	6,923,000	7,800,000	7,035,000	7,235,000	7,235,000
INTERNATIONAL ACTIVITIES					
Salaries and expenses	19,835,000	25,050,000	21,500,000	22,000,000	21,500,000
Salaries and expenses (special foreign currency program)	200,000	200,000	200,000	200,000	200,000
Export control	5,804,000	5,900,000	5,900,000	5,900,000	5,900,000
Total, international activities	25,839,000	31,150,000	27,600,000	28,100,000	27,600,000
OFFICE OF FIELD SERVICES					
Salaries and expenses	5,654,000	6,275,000	5,851,000	5,951,000	5,851,000
FOREIGN DIRECT INVESTMENT REGULATION					
Salaries and expenses	3,100,000	3,000,000	2,500,000	3,000,000	2,750,000

Footnotes at end of table.

Item	New budget (obligational) authority, fiscal year 1970	Budget estimate of new (obligational) authority, fiscal year 1971	New budget (obligational) authority, recommended in House bill	Senate bill	Conference action
(1)	(2)	(3)	(4)	(5)	(6)
MINORITY BUSINESS ENTERPRISE					
Salaries and expenses	$1,294,000	[1] $1,850,000	$1,850,000	$1,850,000	$1,850,000
NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL					
Salaries and expenses		475,000		300,000	300,000
U.S. TRAVEL SERVICE					
Salaries and expenses	4,500,000	6,500,000	4,500,000	4,500,000	4,500,000
ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION					
Salaries and expenses	130,008,000	146,680,000	140,000,000	141,426,000	140,713,000
Research and development	25,539,000	29,695,000	27,500,000	27,500,000	27,500,000
Facilities, equipment, and construction	5,425,000	5,975,000	4,250,000	4,565,000	4,365,000
Satellite operations	7,378,000	25,820,000	25,000,000	25,000,000	25,000,000
Total, Environmental Science Services Administration	168,350,000	208,170,000	196,750,000	198,491,000	197,578,000
PATENT OFFICE					
Salaries and expenses	47,635,000	51,100,000	50,000,000	50,000,000	50,000,000
NATIONAL BUREAU OF STANDARDS					
Research and technical services	39,187,000	44,230,000	41,750,000	42,350,000	42,050,000
Research and technical services (special foreign currency program)	500,000	500,000	500,000	500,000	500,000
Plant and facilities		1,395,000	965,000	965,000	965,000
Total, National Bureau of Standards	39,687,000	46,125,000	43,215,000	43,815,000	93,515,000
OFFICE OF STATE TECHNICAL SERVICES					
Grants and expenses	290,000				
MARITIME ADMINISTRATION					
Ship construction	15,918,000	199,500,000	199,500,000	187,500,000	187,500,000
Operating-differential subsidies (appropriation to liquidate contract authority)	(194,400,000)	(193,000,000)	(193,000,000)	(193,000,000)	(193,000,000)
Research and development	11,100,000	20,700,000	20,700,000	20,700,000	20,700,000
Salaries and expenses	21,324,000	20,750,000	20,750,000	20,750,000	20,750,000
Maritime training	6,368,000	6,800,000	6,800,000	6,800,000	6,800,000
State marine schools	820,000	977,000	977,000	977,000	977,000
(Appropriation to liquidate contract authority)	(1,415,000)	(1,348,000)	(1,348,000)	(1,348,000)	(1,348,000)
Total, Maritime Administration	55,530,000	248,727,000	248,727,000	236,727,000	236,727,000
Total, title III, Department of Commerce	819,425,000	1,007,645,000	949,203,000	952,613,000	943,955,000
TITLE IV—THE JUDICIARY					
Supreme Court of the United States:					
Salaries	2,729,000	3,044,000	2,934,500	2,943,500	2,943,500
Printing and binding Supreme Court reports	195,000	215,000	215,000	215,000	215,000
Miscellaneous expenses	164,000	249,000	224,000	224,000	224,000
Care of the building and grounds	410,000	462,000	462,000	462,000	462,000
Automobile for the Chief Justice	9,900	11,000	11,000	11,000	11,000
Books for the Supreme Court	40,000	46,000	46,000	46,000	46,000
Total, Supreme Court	3,547,900	4,027,000	3,901,500	3,901,500	3,901,500
Court of Customs and Patent Appeals: Salaries and expenses	599,000	615,000	615,000	615,000	615,000
Customs Court: Salaries and expenses	2,106,500	2,308,600	2,128,800	2,128,800	2,128,800
Court of Claims: Salaries and expenses	1,872,000	1,941,000	1,941,000	1,941,000	1,941,000
Courts of appeals, district courts, and other judicial services:					
Salaries of judges	22,765,000	22,975,000	22,957,000	22,975,000	22,975,000
Salaries of supporting personnel	52,327,000	54,086,000	54,078,000	53,862,000	53,862,000
Fees and expenses of court-appointed counsel	4,300,000	4,300,000	4,300,000	4,300,000	4,300,000
Fees of jurors	15,500,000	14,930,000	15,800,000	14,930,000	14,930,000
Travel and miscellaneous expenses	7,500,000	8,273,000	7,950,000	7,950,000	7,950,000
Administrative Office of the United States Courts	2,235,000	2,513,000	2,375,000	2,375,000	2,375,000
Salaries and expenses of United States Magistrates	550,000	5,866,000	560,000	4,560,000	4,560,000
Salaries of referees (special fund)	6,230,000	6,232,000	6,232,000	6,232,000	6,232,000
Expenses of referees (special fund)	9,258,000	9,520,000	9,400,000	9,400,000	9,400,000
Total, other courts and services	120,638,000	128,695,000	123,670,000	126,584,000	126,584,000
Federal Judicial Center: Salaries and expenses	600,000	975,000	700,000	700,000	700,000
Total, title IV, the judiciary	129,273,400	138,561,600	132,956,300	135,870,300	135,870,300
TITLE V—RELATED AGENCIES					
American Battle Monuments Commission: Salaries and expenses	2,716,000	2,739,000	2,739,000	2,739,000	2,739,000
Arms Control Disarmament Agency: Arms control and disarmament activities	9,500,000	8,300,000	8,250,000	8,250,000	8,250,000
Commission on Civil Rights: Salaries and expenses	2,650,000	3,200,000	3,200,000	3,200,000	3,200,000
Office of Education: Civil rights education	19,000,000	24,000,000	19,000,000	19,000,000	19,000,000
Equal Employment Opportunity Commission: Salaries and expenses	13,400,000	19,000,000	14,313,000	19,000,000	15,485,000
Federal Maritime Commission: Salaries and expenses	3,943,000	4,629,000	3,929,000	4,749,000	4,479,000
Foreign Claims Settlement Commission: Salaries and expenses	706,000	750,000	710,000	710,000	710,000
National Commission on Reform of Federal Criminal Laws: Salaries and expenses	300,000	100,000	100,000	100,000	100,000

Footnotes at end of article.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1970 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1971—Continued

[Note—All amounts are in the form of appropriations unless otherwise indicated]

Item	New budget (obligational) authority, fiscal year 1970	Budget estimate of new (obligational) authority, fiscal year 1971	New budget (obligational) authority, recommended in House bill	Senate bill	Conference action
(1)	(2)	(3)	(4)	(5)	(6)
Small Business Administration:					
Salaries and expenses:					
Appropriation	$17,308,000	$24,100,000	$18,950,000	$19,950,000	$18,950,000
Transfer from revolving funds	(50,000,000)	(53,100,000)	(53,100,000)	(53,100,000)	(53,100,000)
Business loan and investment fund		242,000,000	200,000,000	200,000,000	200,000,000
Payment of participation sales insufficiencies	1,757,000	1,340,000	1,340,000	1,340,000	1,340,000
Disaster loan fund	175,000,000				
Total, Small Business Administration	194,065,000	267,440,000	220,290,000	221,290,000	220,290,000
Special Representative for Trade Negotiations: Salaries and expenses	533,000	757,000	550,000	597,000	597,000
Subversive Activities Control Board: Salaries and expenses	401,400	401,400	401,400	401,400	401,400
Tariff Commission: Salaries and expenses	4,139,000	3,845,000	3,845,000	3,845,000	3,845,000
U.S. Information Agency:					
Salaries and expenses	167,633,000	168,300,000	165,433,000	165,433,000	165,433,000
Salaries and expenses (special foreign currency program)	10,800,000	13,000,000	13,000,000	13,000,000	13,000,000
Special international exhibitions	2,783,000	[5] 5,456,000	3,500,000	4,566,000	4,033,000
Special international exhibitions (special foreign currency program)		332,000	332,000	332,000	332,000
Acquisition and construction of radio facilities		800,000	600,000	600,000	600,000
Total, U.S. Information Agency	181,216,000	187,888,000	182,865,000	183,931,000	183,398,000
United States-Mexico Commission for Border Development and Friendship: Salaries and expenses	159,000				
Total, title V, related agencies	432,728,400	523,049,400	460,192,400	467,542,400	462,494,400
Total, titles I, II, III, IV, and V, new budget (obligational) authority—appropriations	2,653,376,900	[7] 3,251,200,000	3,106,956,500	3,122,080,500	3,108,074,500
Memoranda:					
Appropriations to liquidate contract authorizations	(195,815,000)	(194,348,000)	(194,348,000)	(194,348,000)	(194,348,000)
Total appropriations, including appropriations to liquidate contract authorizations	(2,849,191,900)	(3,445,548,000)	(3,301,304,500)	(3,316,428,500)	(3,302,422,500)

[1] Includes $16,500,000 for "Regional development programs."
[2] Includes $6,800,000 for "Regional development programs."
[3] Includes $339,000 for "Regional development programs."
[4] $23,639,000 funded from appropriations under Economic Development Administration.
[5] Includes $250,000 requested in H. Doc. 91-305.
[6] Reflects reduction of $629,000 submitted in H. Doc. 91-305.
[7] Includes $7,295,000 budget amendments to Senate as follows: $1,900,000, S. Doc. 91-90, Department of State, salaries and expenses; $475,000, S. Doc. 91-91, Department of Commerce, National Industrial Pollution Control Council; $4,220,000, S. Doc. 91-69, The Judiciary; $700,000 S. Doc. 91-92, Federal Maritime Commission.

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The Senate resumed the consideration of 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.

Mr. DOLE. Mr. President, we have before us today legislation which is truly of major significance in its impact upon this country. H.R. 18583, the Comprehensive Drug Abuse Prevention and Control Act of 1970, gives the opportunity at long last to make a positive legislative contribution in the war against drugs.

No one can possibly deny the epidemic proportions which the drug abuse problem has reached today. Throughout the country, drug availability continues to alarm concerned citizens and particularly parents whose children are exposed daily to offers from friends who want company in the drug abuse habit. Brightly colored capsules and pills whose effects are virtually unknown are being circulated through our schools and other public places with an appalling lack of control. It is an unfortunate fact, as President Nixon pointed out in his message to Congress on drug abuse that:

It is doubtful that an American parent can send a son or daughter to college today without exposing the young man or young woman to drug abuse.

In my State of Kansas, the Kansas Bureau of Investigations has reported that narcotics arrests are up 130 percent for the first 6 months of 1970, as compared to the same period in 1960. In 1969 alone, arrests for narcotic violations increased 100.9 percent over 1968 and in 1970 the figures for the first 6 months indicate there was a 135-percent increase.

With an increase in narcotic arrests, has come an increase in the rate of crime. In the period from 1966 to 1969, the overall crime rate increased 29 percent. This included: 89 percent for robberies; 56 percent for auto theft, and 50 percent for larceny. It is not clear how much crime is attributable to drug abuse. However, estimates involving the relationship between drug addiction and street crime range from 50 percent to an even higher percentage.

The Evening Star of October 6, contained an interesting editorial describing the preliminary results of a study on the relationship between crime and drug addiction. I ask unanimous consent that the editorial be printed in the RECORD at this point.

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

DRUG AND CRIME

While the relationship between crime and drug addiction is only one aspect of the narcotics problem, it is certainly a major consideration in this city. The monthly statistics continue to show an encouraging decline in serious crime here. And it seems logical to assume that that trend is being influenced to some degree by the stepped-up war on narcotics, especially through efforts of the District's new Narcotics Treatment Administration.

No one can yet put these factors clearly in perspective. But the other day the local narcotics administrator, Dr. DuPont, reported findings of the first pilot study on the subject—a four-month assessment of the arrest experience of 150 drug addicts, nearly all with criminal backgrounds, who were enrolled at one of the agency's treatment centers last May 1. The results are significant, and we think they are extremely hopeful in terms of the future.

On an over-all basis, DuPont said, 14.7 percent of the 150 addicts had been arrested since May 1—a rate considerably below that reported in similar studies involving participants of previous city drug programs.

The more interesting findings, however, lay within that raw statistic. Among a substantial number of persons who completely dropped out of the NTA program, the arrest rates were high. Among one group of 87 heroin addicts who remained with the methadone maintenance program, however, the arrest rate was only 4.6 percent. And this, as it turned out, also was considerably better than the record among addicts enrolled in treatment programs not involving methadone.

The full significance of these findings will of course have to be evaluated later—in trems of longer experience with many more addicts than were covered in the pilot study. Still, the figures cited by DuPont at this stage of

the game (the new program is not yet eight months old), are surely encouraging.

Their ramifications were to have been examined in more detail at a Senate District Committee hearing last week, called to assess the NTA's over-all progress. We trust that the hearing, which unfortunately had to be canceled, will be rescheduled by Chairman Tydings before Congress adjourns for the year.

Mr. DOLE. Mr. President, H.R. 18583, which is similar to S. 3246 as it passed this body by unanimous vote last January, contains devices for the control of drug availability which should be satisfying and encouraging to every Member of Congress and every concerned citizen. The well-planned system of registration relating to manufacturers and distributors of drugs, when coupled with the system of scheduling drugs under the authority of the Attorney General, should go a long way toward reducing drug availability. This regulation of the legitimate industry will undoubtedly cut down on the tremendous diversion of legally manufactured dangerous drugs to illicit users.

The improved export and import controls in title III will enable law enforcement officials to keep a closer watch on the drugs that move across our borders, a factor affecting not only border States but States like Kansas, in America's heartland. The heroin addict in Kansas must get his supply from outside the United States, since this drug is not produced within this country.

The treatment and rehabilitation provisions of title I should significantly contribute to a reduction in the demands for these dangerous substances, a need which must have equal priority with a reduction in the supply. Regarding the supply, however, this bill also makes available increased tools for law enforcement personnel in the performance of their extremely hazardous duties. The broader arrest powers for Federal agents, the provision for limited "no knock" and administrative inspection warrants, and the clarification of the attorney general's authority in various areas relating to enforcement are all important landmarks in this legislation.

Of particular interest to citizens of Kansas and other States where marihuana grows wild in some abundance, is the provision authorizing the attorney general to conduct programs, in cooperation with appropriate agencies, aimed at eradicating wild or illicit growth of plants which can produce dangerous drugs. Kansas presently has a pilot marihuana eradication program underway and with the assistance of the law enforcement assistance administration, next year eradication will take place on 68,000 acres in 40 of our counties.

Although this legislation will be of assistance, it must be made clear that the ultimate responsibility for education and enforcement remains with the State and local government. We are revising and modernizing only the existing Federal laws and in no way do we seek to preempt existing State laws, but the Federal Government must provide the leadership, and by passing this bill, we will be encouraging the States to make greater efforts to protect our young people. In August, Kansas launched a drug abuse program which is designed to saturate every community in the State with information. After a series of training sessions which will extend to every local school district, every Kansan will have been exposed to accurate information.

Mr. President, the American people have already waited far too long for the passage of this legislation. Let us not delay this measure, and the relief it will provide, any longer.

Mr. NELSON. Mr. President, earlier this year Senator HAROLD HUGHES addressed the annual convention of the National Association of Secondary School Principals here in Washington. Senator HUGHES' address, "Social Problems and the Curriculum: The School and Drugs," went to the heart of the drug abuse crisis which is eroding the security and health of this society and focused attention on the necessary role which education and the school system must play in any successful program to combat narcotics addiction.

From the vantage point of his position as chairman of the Senate Subcommittee on Alcoholism and Narcotics, which has conducted extensive hearings throughout the Nation on addiction problems, Senator HUGHES first of all pointed out that:

> It is important for anyone who wants to develop some understanding of the (drug) problem to set aside any preconceived, rigid and doctrinaire attitudes based more on prejudice than on experience . . . We need a variety of approaches and the wisdom of many professional disciplines plus, above all, human understanding to make any real headway in meeting a problem that is unbelievably complex, many-faceted and deeply rooted in the contemporary culture of our society.

It is becoming increasingly apparent the degree and pervasiveness of drug abuse in this Nation, particularly among our youth, has not been effectively controlled by law enforcement and harsh punishment alone. While strong laws and firm enforcement are a necessary component in dealing with the network of narcotics distribution, this approach has not been successful with the user. While the crackdown on marihuana coming into this country from Mexico was successful in shutting down the market supply of "pot" in this country, it did not stem the tide of drug abuses, as the vast simultaneous increase in the use of amphetamines and harder drugs such as heroin by young people demonstrated.

In his February 9 address, Senator HUGHES put the issue squarely before us when he concluded that:

> An effective drug control program will require a total effort by our whole society—on a dimension few have yet grasped—we must be prepared to invest billions at all levels of government in contrast to the pittance that is being put into existing programs. I am referring to massive treatment, research, education and rehabilitation programs.

Today we have before us an opportunity to begin to translate some of our rhetorical concern and understanding of drug abuse into a concrete administrative structure capable of mandating and carrying out a coordinated and broadly based attack upon drug dependence and narcotic addiction. To help achieve this goal, I am cosponsoring and supporting Senator HUGHES' substitute amendment to title I of H.R. 18583. Whereas titles II and III deal with the necessary law enforcement aspects of this problem, it is necessary to complete our commitment to combat drug abuse and provide for the prevention, treatment, and rehabilitation side of the drug problem. We cannot seriously claim to be working to end this menace, unless we are willing to provide for all the necessary aspects of the issue in addition to enforcement.

The substitute amendment for title I will complement the law enforcement provisions of the remaining titles of the drug abuse bill by setting up a five-point administrative structure to provide the necessary research educational tools, and program support of prevention, treatment, and rehabilitation efforts.

This substitute amendment to title I would:

First. Establish a National Institute for the Prevention and Treatment of Drug Abuse and Drug Dependence within the Public Health Service of the Department of Health, Education, and Welfare. In this manner, the Secretary of Health, Education, and Welfare, through the Institute, would be able to coordinate the administrative, educational, training, research, planning, coordinating, statistical, and reporting responsibilities necessary to design and implement a specific and comprehensive national drug abuse and drug dependence prevention, treatment and rehabilitation plan. The plan would be developed and then implemented by the Secretary, through the Institute, and submitted annually for congressional review.

Second. Authorize a formula grant program and a project grant program to assist States and communities in planning, establishing, and carrying out a wide range of coordinated and comprehensive activities in the areas of drug education, prevention, treatment, and rehabilitation.

Third. Establish an Intergovernmental Coordinating Council on Drug Abuse and Drug Dependence consisting of Federal, State, and local governmental officials to provide for a coordinated channel of governmental communication and comment on prevention, treatment, and rehabilitation programs; and establish an independent National Advisory Council on Drug Abuse and Drug Dependence to provide an outside advisory resource for the Secretary to assist in his efforts under this title.

Fourth. Provide for the establishment of prevention, treatment, and rehabilitation programs for all Federal civilian employees.

Fifth. Incorporate the provisions in the House version of title I which broaden the authority in the Public Health Service Act dealing with educational and research activities.

Mr. President, to seriously combat drug abuse, we must begin to put as much effort and resources into taking preventive measures to arm and fortify our youth against addiction and saving and treating drug dependents as we have in

our attempts to catch and punish the drug user and the network of suppliers.

The substitute amendment would begin to make this additional and necessary commitment.

Mr. President, I ask unanimous consent that Senator HUGHES' prescient remarks before the National Association of Secondary School Principals last winter be printed at this point in the RECORD.

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

REMARKS OF SENATOR HAROLD E. HUGHES

As a United States Senator and a three-term Governor who has always regarded education as a top priority on the agenda of the nation, I am privileged to be here this morning.

I have very deep feelings about the drug problem, U.S.A. and the role of the school system in coping with that problem.

I am happy that a highly qualified representative of the medical profession, Dr. Lewis, is on this panel with me to cover the technical and scientific aspects of the drug problem.

I have strong convictions too that if we are to deal with the drug problem effectively we must rely heavily on the best scientific and medical talent we have in our society.

On the floor of the Senate in recent days, I fought for the adoption of a series of amendments to the Administration's drug enforcement bill designed to place securely in the hands of the scientists and doctors of the Department of Health, Education, and Welfare the responsibility for making judgments regarding the classification of dangerous drugs and research and education programs.

I might add that we lost this particular battle, but I am not ready to concede that we have lost the war.

Since the drug problem among children and youth vaulted into the national headlines, I know that you school administrators have received reams of material about drug abuse and narcotics addiction with a variety of suggested approaches to what schools should be doing about it.

Some of this material is valuable; some of it, I am sure, is confusing. About the only point that is generally agreed on is that the problem of drug abuse and narcotics addiction among American children and youth is critically serious, widespread and growing at an alarming rate. It is a national epidemic that threatens the security and well being of our society.

It seems to me that the most valuable purpose I can serve here this morning is to share with you some very basic, personal impressions I have accumulated from the hearings we have conducted across the nation with the Senate Subcommittee on Alcoholism and Narcotics which I am privileged to chair.

In the first place, I believe it is important for anyone who wants to develop some understanding of the problem to set aside any preconceived, rigid and doctrinaire attitudes based more on prejudice than on experience. For my own part, I can tell you that what we found in our hearings was in many respects far different from what I had vaguely expected to find.

Moreover, if there is a single, neat, sure-fire solution, I have not yet seen it and frankly do not believe it exists.

I am reminded of my favorite modern proverb: there is no solution; seek it lovingly.

We need a variety of approaches and the wisdom of many professional disciplines plus, above all, human understanding to make any real headway in meeting a problem that is unbelievably complex, many-faceted and deeply rooted in the contemporary culture of our society.

First, let me flash before you a few vignettes which will suggest the subtlety and pervasiveness of the problem.

In our Los Angeles hearings, we heard this testimony from a 15 year old boy:

"My name is Gary H. I am a resident of Los Angeles. I am 15 years old and a junior in high school.

"I have done a lot of growing up on the Sunset Strip.

"It is a true statement when I tell you there is no chemical or drug in my bloodstream. My body has been completely clean for about three months.

"I would like to fill you in on my past experiences as a narcotics addict and an alcoholic.

"I was in the 6th grade and 10 years old when my experience in drugs began. My first exposure was with tranquilizers and sleeping pills. I found some pills in the bathroom of my home. I did not know what they were and I really don't know why I did, but I took them to my room and took four of them.

"In about an hour or so I got a—I don't know if it was physical or mental—but I got a lift from them. I felt good. I felt like I could do things I could have never done before—like I had a powerful command over things. So I thought if I felt that good, another pill would make me feel better. Anyhow, within a few days the 20 pills were gone, except for two. I saved two of them and showed them to a friend of mine who said he could get me more. He said they were sleeping pills and tranquilizers. That was the beginning and I went on a search for more.

"Almost right away I did not only want the pills—I needed them. I used to think of them as my food and water. My body had to have them. I would get sick and shaky without them.

"This turned into an expensive habit for me, and so I found alcohol. I heard it was cheaper and with the alcohol I felt I wouldn't need the pills anymore. However this wasn't true.

"So over a period of time when the alcohol didn't help to cure me, I went back to the pills. I now know that it is all the same thing but in a different form. That is my opinion, but my experience with the pills and the alcohol, they are all one. So I began taking them both together.

"I was 12, and pretty soon after that I started on other chemicals or dangerous drugs such as marihuana, hashish, cocaine, barbiturates, benzedrine and LSD.

"Within a year or so I discovered the wonderful world of methedrine. It was as easy to buy the drug as it was to buy food in the super-market. At that time it was harder to get the money than it was to get the drugs.

"If you want to know how a 13 year old gets the money to support his addictions, I would have to tell you. I would buy the drugs at the street market cost on the Strip from men in white shirts and ties. If one wasn't there, there was always another one around. Then, in turn, I would sell it at a profit to other young users. That's how I supported my addictions. However, there are many other ways to support them.

"The important thing I want to tell you is that I couldn't function without the drugs and alcohol. I couldn't function as a musician or as an athlete. I couldn't perform well in football without popping 35 to 50 pep pills down my throat. It gave me a sense of security in my music and in football it gave me a fearless sense of aggression. I could not function without them.

"That's my story. My life was completely unmanageable. But now I have found a way to live, my life, not run it, and only with the help of many other people could I have achieved this goal. I now choose not to use drugs or alcohol. I have chosen life instead of hell. I could never have done it alone."

Consider now the case of Paul Jahoda, also age 15, who resided here in the Washington metropolitan area.

Paul Jahoda's body was found May 7 inside a large storm sewer in the affluent Fairfax subdivision of Mantua.

To the Fairfax County medical examiner, Paul Jahoda was a suicide who had taken an overdose of sleeping pills following a fight with his father.

To the police the death appeared to be a mystery, probably an accident.

To Joseph Jahoda, his only son was "a victim of the times."

Whatever the cause of his death, Paul was a lonely, introverted boy who was learning to play the guitar. Schoolmates recounted that he used to "try out" drugs that others brought to school to "see if he could get a high without getting sick . . ."

"He would take the pills they gave him, and if he didn't get sick, and got a high, then they'd know it was okay. Paul said it was all right to do because it hadn't hurt him."

Another friend recalls: "He really liked the high he got from being drunk more than any other high. But when his father ended his drinking, Paul took up drugs because he could get them into the house without being caught.

"He'd do anything for kicks—for highs."

You perhaps read about the case of Isabel Salazar, the 12-year-old daughter of a wealthy New York psychiatrist who was found in an upper west side apartment building, heavily drugged from a narcotics binge that began when she ran away from home. The 4-foot-9-inch girl, who had dropped out of an exclusive girls' school earlier because of her drug problem, had been introduced to drugs by acquaintances in Central Park soon after her 11th birthday.

A month ago I was back home in Iowa, visiting the detoxification center in Des Moines, where the Director of the center, Dr. Keith Simpson, told me of a baby who was born to parents who were heroin addicts under his care. The baby was born with heroin withdrawal symptoms. It became evident that the baby could not live without drugs in the early weeks so the doctors were compelled to treat the infant for drug withdrawal, along with the parents. Now all three are off drugs, but obviously this infant faces an uncertain future.

A suburban mother, whose 17 year old daughter attends a fashionable girl's school in Georgetown, told me recently that the use of alcohol and marihuana is widespread among her daughter's friends. The girl's father, slightly drunk on martinis at the time, tried to talk to the girl about it. She ran away from home. When found by the police she refused to come home, preferring to spend two days in a detention home.

Another young boy from a comfortable middle-class home told me recently: "Dad wants to be a good father. He'll say, 'Jim, let's you and me be pals, tell me about what you're doing, what are your friends interested in . . .' and I'll say: 'Well, dad, most of the kids I know are smoking pot. I tried a joint at a party last weekend and . . .' and before I can finish the sentence he orders me out of his sight and out of the house. All the while he's drinking scotch and smoking cigarettes which all the kids know are worse for you than pot."

While drug abuse and narcotics addiction have been—for very understandable reasons—highly concentrated in the ghettos, the epidemic has now reached the rich suburbanites and the sons and daughters of the famous.

A blonde-haired youth, heir to a Washington fortune, was picked up in the men's room of a Bethesda gas station last year with LSD in his possession.

He admitted to the judge that he had tried LSD, marihuana, hashish, amphetamines and barbiturates.

It is not an unfamiliar story. He began serious involvement with drugs after flunking out of an exclusive boys' school.

"I did well until the seventh grade," he said. "It seemed too staid to me—all boys and too competitive. My social life was pretty nil. I didn't get along well with the masters and the students. I was sort of a loner."

The parents, who are divorced, differed on where the boy should be sent. His mother favored a private co-ed school in New England. His father favored a military academy.

"I believe in the use of the uniform," the father said. "This kid needs a firm hand put over him. . . ."

In Philadelphia, the son of the Governor of New Jersey was arrested on a charge of possessing marihuana; in New York, the son of a wealthy, prominent candidate for the Governorship was picked up on charges of possession of hashish and methedrine; while in Hartford, Connecticut, the 17-year old son of the city manager was charged with selling LSD.

The tragic death of Art Linkletter's daughter misted the eyes of the whole country, and I could go on indefinitely listing the names of famous personages whose children have been victims of the drug culture.

These ominous signs of the times would seem to be obvious:

(1) The number of drug abusers and experimenters is increasing at what seems to be geometric progression; (2) drug use is spreading to ever younger children—especially in the elementary grades in the larger cities; (3) hard narcotics are invading the suburbs and the small towns; (4) an ever-increasing number of substances—from glue to injected peanut butter—are being used to induce kicks; and (5) drugs are being employed in weird and dangerous combinations—starting out, usually, with alcohol and pills.

While strict laws and strict law enforcement in connection with drug abuse and distribution are necessary; excessively harsh punishment alone is not getting the job done.

In fact, it would appear that the sadistically severe punishment sometimes meted out for minor marihuana offenses has only served to exacerbate the situation, to reinforce the determination of youth to "turn on."

You see, the kids know, for the most part, more about it than we do. They learn about it at school, they read the reports, they study the evidence. They know the credibility gap between what their parents say and what the evidence shows. And they hate us for our hypocrisy—or pity us for our ignorance.

What impels the youth of this generation to "turn on," to proceed deliberately from one dangerous unknown to another "for kicks?"

I can only tell you that I am convinced it all begins from a deep loneliness, a sense of not belonging to the present social order and not believing that meaningful future exists.

Most adults are incapable, without great effort, of understanding this emotional hangup, and it is probable that the kids don't really understand it themselves.

You get the feel of it from the youth symbols of our times, the rock music, the bizarre styles, the blunt vernacular . . . and the drugs.

If these sound like imprecise statements, I can only say that the problem itself is imprecise, fuzzy, haunting, almost psychedelic in character.

The generation gap is very real, tragically dangerous.

We can only keep searching, listening, working, reasoning, trying to understand.

We must never slam the door.

It is not a job that schools can do alone, where parents have failed or where stable home background is lacking.

It will require a total effort by our whole society—on dimension few have not grasped.

As I have told my colleagues in the Congress, we must be prepared to invest billions at all levels of government in contrast to the pittance that is being put into existing programs. I am referring to massive treatment, research, education and rehabilitation programs.

We have spent lavishly to put pot-smokers and narcotics addicts in jail, only to see them emerge in due time to be imprisoned again or to die.

And what has this accomplished?

The time has come to put as great an effort and investment in curing people and saving lives as we have been putting into apprehending and punishing those caught up in the drug mesh.

What is needed is open-mindedness, patience and faith in the indestructibility of the value of a human being.

These youthful lives are salvageable—and worth salvaging.

School administrators, counsellors, teachers are on the front lines. It is essential that they realize how subtle and sensitive and diversified the drug problem is.

Mr. MILLER. Mr. President, I regret very much that I must oppose the amendment offered by my colleague from Iowa (Mr. HUGHES), because we share a common concern over the need for prevention, treatment, and rehabilitation in the area of drug abuse.

However, that concern must be matched by good legislation if it is to become meaningful. The amendment has been thoroughly analyzed by the Department of Health, Education, and Welfare—see page 35053 of the RECORD for October 6—and it quite obviously is seriously defective.

Among the numerous defects pointed out in the Department's analysis, I am especially concerned over my colleague's proposal to take away from the National Advisory Mental Health Council its authority to review projects and policy advice to the Secretary of Health, Education, and Welfare, thus divorcing drug abuse prevention, treatment, and rehabilitation from the broad framework of the mental health program; and I am concerned over his proposal to abolish the provisions of the Community Health Centers Act with respect to grants for construction and staffing of facilities for the treatment and rehabilitation of narcotics addicts which require that such projects either be established within the framework of a Community Mental Health Center or that at least there be arrangements whereby comprehensive services would be provided or made available by the grantee.

The title of the House-passed bill which would be replaced by my colleague's amendment empowers the Secretary—section 3(a)—to give broad protection to researchers against being compelled to disclose the identity of individuals who are the subjects of research, regardless of whether the research is conducted under authority of this particular title; whereas the proposed amendment would limit this protection to research conducted only under this title, and would further destroy this protection by authorizing courts to compel disclosure. This title of the bill was all worked out between members of the House committee and representatives of the Departments of Justice and Health, Education, and Welfare, and I cannot understand why such carefully considered draftsmanship must now be scuttled.

It has been pointed out that this amendment was the subject of a separate bill which my colleague introduced last March 9 as S. 3562. The bill received hearings before his Subcommittee on Alcoholism and Narcotics of the Committee on Labor and Welfare, and strong objections to many of its provisions were voiced by representatives of the Departments of Justice, and Health, Education, and Welfare. To date, the committee has not seen fit to approve the bill and report it to the Senate for action.

Notwithstanding the committee's failure to act favorably on the bill, we are now asked to approve it in the form of an amendment to a law enforcement bill—one which is desperately needed by our law enforcement agencies seeking to slow down the terrible traffic in drugs. The managers of the House-passed bill have warned that the adoption of this amendment would delay if not defeat the bill altogether, and because in its present state, the House will not agree to this amendment. I can understand this position because the amendment is the same as a bill which our own Senate committee has not approved.

The amendment should be withdrawn and the bill which it represents should be carefully reworked. If this is done, I should think it could be approved by the committee and eventually by the Senate. It would be tragic to push an amendment subject to so many defects at the risk of delaying or defeating action long overdue for better law enforcement and revision of penalties to accord with better justice.

The PRESIDING OFFICER. The question now occurs on the amendment of the Senator from Iowa. 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. MANSFIELD. Mr. President, I ask unanimous consent that the motion by the Chair to vote on the pending amendment be voided.

The PRESIDING OFFICER. The Chair states that the rollcall has not begun since no Senator has responded.

Mr. MANSFIELD. So it can be done. The Senator from Nebraska is not on the floor.

Mr. HRUSKA. Mr. President, I was removed 6 feet from where I stand now—and I now stand by the desk of the majority leader—and the motion was considered and an attempt was made to pass it. As I understand it, the yeas and nays have been ordered.

Mr. MANSFIELD. The yeas and nays are going to be called. It was not going to be passed by voice vote. The clerk started to call the roll, but no Senator has answered as yet.

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

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

The question is on agreeing to the amendment of the Senator from Iowa. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. DODD (after having voted in the negative). On this vote I have a live pair with the Senator from Maine (Mr. MUSKIE). If he were present, he would vote "Yea." If I were permitted to vote, I would vote "Nay." Therefore, I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), 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 Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), and 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 Georgia (Mr. TALMADGE), 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 Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Texas (Mr. YARBOROUGH), the Senator from Ohio (Mr. YOUNG), the Senator from Oklahoma (Mr. HARRIS), and the Senator from Missouri (Mr. SYMINGTON) would each vote yea.

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senator from New York (Mr. GOODELL), the Senator from California (Mr. MURPHY), the Senator from Kansas (Mr. PEARSON), 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 Kansas (Mr. PEARSON) would vote "yea."

On this vote, the Senator from New York (Mr. GOODELL) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from New York would vote "yea" and the Senator from South Dakota would vote "nay."

On this vote, the Senator from California (Mr. MURPHY) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from California would vote "yea" and the Senator from Texas would vote "nay."

The result was announced—yeas 44, nays 23, as follows:

[No. 363 Leg.]

YEAS—44

Allen	Hatfield	Nelson
Anderson	Hollings	Pastore
Bayh	Hughes	Pell
Brooke	Inouye	Percy
Burdick	Jackson	Proxmire
Byrd, W. Va.	Javits	Randolph
Case	Long	Ribicoff
Church	Magnuson	Saxbe
Cranston	Mansfield	Schweiker
Dominick	Mathias	Spong
Eagleton	McCarthy	Stennis
Eastland	McGovern	Stevens
Ellender	McIntyre	Thurmond
Ervin	Metcalf	Williams, N.J.
Hart	Mondale	

NAYS—23

Allott	Curtis	McClellan
Baker	Dole	Miller
Bennett	Griffin	Packwood
Bible	Gurney	Scott
Boggs	Hansen	Smith, Maine
Cook	Holland	Williams, Del.
Cooper	Hruska	Young, N. Dak.
Cotton	Jordan, Idaho	

PRESENT AND GIVING A LIVE PAIR—1

Dodd, against.

NOT VOTING—32

Aiken	Harris	Prouty
Bellmon	Hartke	Russell
Byrd, Va.	Jordan, N.C.	Smith, Ill.
Cannon	Kennedy	Sparkman
Fannin	McGee	Symington
Fong	Montoya	Talmadge
Fulbright	Moss	Tower
Goldwater	Mundt	Tydings
Goodell	Murphy	Yarborough
Gore	Muskie	Young, Ohio
Gravel	Pearson	

So Mr. HUGHES' amendment was agreed to.

Mr. HUGHES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS and Mr. DOMINICK moved to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1031

Mr. DOMINICK. Mr. President, I call up my amendment No. 1031 and ask that it be stated. Let me advise my colleagues that discussion on it will be quite short.

The PRESIDING OFFICER (Mr. CRANSTON). The amendment will be stated.

The legislative clerk read as follows:

AMENDMENT No. 1031

TITLE IV—REPORT ON ADVISORY COUNCILS

SEC. 1200. (a) Not later than March 31 of each calendar year after 1970, the Secretary of the Department of Health, Education, and Welfare shall submit a report on the activities of advisory councils (established or organized pursuant to any applicable statute of the Public Health Service Act, Public Law 410, Seventy-eighth Congress, as amended, or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Public Law 88-164, as amended) to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. Such report shall contain, at least, a list of all such advisory council, the names and occupations of their members, a description of the function of each advisory council, and a statement of the dates of the meetings of each advisory council.

(b) If the Secretary determines that a statutory advisory council is not needed or that the functions of two or more statutory advisory councils should be combined, he shall include in the report a recommendation that such advisory council be abolished or that such functions be combined.

(c) As used in this section, the term "statutory advisory council" means any committee, board, commission, council, or other similar group established or organized pursuant to any applicable statute to advise and make recommendations with respect to the administration or improvement of an applicable program or other related matter.

Mr. DOMINICK. Mr. President, if I may have the attention of my colleagues, it is my hope that the manager of the bill will accept the amendment. It would add a new title IV, to provide that the Secretary of Health, Education, and Welfare, on March 31 of each calendar year, starting next year, would submit a report on the activities of advisory councils established under the Public Health Service Act and Mental Retardation Facilities and Community Mental Health Centers Construction Act to the Committee on Labor and Public Welfare and also to the Interstate and Foreign Commerce Committee of the House.

This report would contain a list of all the advisory councils, the names and occupations of the members, a description of their functions, and a statement of the dates of their meetings for that year.

If the Secretary determines, in the process of preparing his annual report, that an advisory council is not needed, and should be abolished, or that the functions of two or more might be combined, he would include in his report recommendations to that effect. Congress would decide whether to act on such recommendations. It would not be automatic.

In order to illustrate what I am talking about, these publications contain nothing but lists of the advisory councils, and their memberships, established in connection with just three of the operating agencies of the Public Health Service—the National Institutes of Health, the Health Services and Mental Health Administration, and the Environmental Health Service.

Without trying to be dramatic, I am sure there is no one in this Chamber who knows what they are, what they do, or what membership they represent.

There are about 325 statutory advisory councils with about 3,375 appointed members. These individuals and their staffs are entitled to compensation of $50 to $100 per day, in addition to expenses for travel and subsistence.

I am not saying that we need to abolish them all, but it does seem to me, since we have so much money involved here, that we ought to have some kind of periodic survey and report to see what accommodation we might have in the way

of streamlining the procedure. That is all I am asking in the amendment.

It is my hope that the manager of the bill will accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

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

Mr. DOMINICK. I yield.

Mr. HRUSKA. Mr. President, it is the understanding of this Senator that the purpose of the amendment is to cause the Secretary of Health, Education, and Welfare to inventory all of these bodies, whether they be commissions, committees, or anything else, to evaluate their present effectiveness and to determine whether their mission has been accomplished and discharge them, or whether there is any further need for any of their originally declared purposes.

Mr. DOMINICK. The Senator is correct. We have gone further than that, because we had the same problem in the educational field. We have a provision in the educational law now which, of course, gives the Secretary the authority to abolish them unless either House of Congress objects. This would not work in that way. We ask him to make a report and then the Congress can abolish them or not as it chooses.

Mr. HRUSKA. Mr. President, if the origin of the body is in the executive branch, would that prohibition still apply?

Mr. DOMINICK. They would still be able to do it, but they would have to report to us as to what they were doing and why.

Mr. HRUSKA. So that we would be informed.

Mr. DOMINICK. The Senator is correct.

Mr. HRUSKA. Otherwise, if they were created by statute, the recommendation would run from the Secretary to the Congress for its good judgment.

Mr. DOMINICK. The Senator is correct. Congress would have the right to act or not to act as it saw fit.

Mr. HRUSKA. Is there any time limit on the assignment matter?

Mr. DOMINICK. We are asking him to do it once a year, not later than March 31.

Mr. DODD. Mr. President, I think this is a good amendment. I am happy to accept it.

Mr. HRUSKA. Mr. President, I concur with the Senator from Connecticut.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

The amendment was agreed to.

RESOURCE RECOVERY ACT OF 1970—CONFERENCE REPORT

Mr. RANDOLPH. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11833) to amend the Solid Waste Disposal Act in order to provide financial assistance for the construction of solid waste disposal facilities, to improve research programs pursuant to such Act, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. CRANSTON). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report, as follows:

CONFERENCE REPORT (H. REPT. NO. 91–1579)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11833) to amend the Solid Waste Disposal Act in order to provide financial assistance for the construction of solid waste disposal facilities, to improve research programs pursuant to such Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following: That this Act may be cited as the "Resource Recovery Act of 1970".

TITLE I—RESOURCE RECOVERY

SEC. 101. Section 202(b) of the Solid Waste Disposal Act is amended to read as follows:

"(b) The purposes of this Act therefore are—

"(1) to promote the demonstration, construction, and application of solid waste management and resources recovery systems which preserve and enhance the quality of air, water, and land resources;

"(2) to provide technical and financial assistance to States and local governments and interstate agencies in the planning and development of resource recovery and solid waste disposal programs;

"(3) to promote a national research and development program for improved management techniques, more effective organizational arrangements, and new and improved methods of collection, separation, recovery, and recycling of solid wastes, and the environmentally safe disposal of nonrecoverable residues;

"(4) to provide for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal systems; and

"(5) to provide for training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems."

SEC. 102. Section 203 of the Solid Waste Disposal Act is amended by inserting at the end thereof the following:

"(7) The term 'municipality' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law with responsibility for the planning or administration of solid waste disposal, or an Indian tribe.

"(8) The term 'intermunicipal agency' means an agency established by two or more municipalities with responsibility for planning or administration of solid waste disposal.

"(9) The term 'recovered resources' means materials or energy recovered from solid wastes.

"(10) The term 'resource recovery system' means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues."

SEC. 103. (a) Section 204(a) of the Solid Waste Disposal Act is amended to read as follows:

"SEC. 204. (a) The Secretary shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to—

"(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

"(2) the operation and financing of solid waste disposal programs;

"(3) the reduction of the amount of such waste and unsalvageable waste materials;

"(4) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes; and

"(5) the identification of solid waste components and potential materials and energy recoverable from such waste components."

(b) Section 204(d) of the Solid Waste Disposal Act is repealed.

SEC. 104. (a) The Solid Waste Disposal Act is amended by striking out section 206, by redesignating section 205 as 206, and by inserting after section 204 the following new section:

"SPECIAL STUDY AND DEMONSTRATION PROJECTS ON RECOVERY OF USEFUL ENERGY AND MATERIALS

"SEC. 205. (a) The Secretary shall carry out an investigation and study to determine—

"(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, and the impact of distribution of such resources on existing markets;

"(2) changes in current product characteristics and production and packaging practices which would reduce the amount of solid waste;

"(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

"(4) the use of Federal procurement to develop market demand for recovered resources;

"(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

"(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling, and conservation of such materials; and

"(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items.

The Secretary shall from time to time, but not less frequently than annually, report the results of such investigation and study to the President and the Congress.

"(b) The Secretary is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a).

"(c) Section 204 (b) and (c) shall be applicable to investigations, studies, and projects carried out under this section."

(b) The Solid Waste Disposal Act is amended by redesignating sections 207

through 210 as sections 213 through 216, respectively, and by inserting after section 206 (as so redesignated by subsection (a) of this section) the following new sections:

"GRANTS FOR STATE, INTERSTATE, AND LOCAL PLANNING

"SEC. 207. (a) The Secretary may from time to time, upon such terms and conditions consistent with this section as he finds appropriate to carry out the purposes of this Act, make grants to State, interstate, municipal, and intermunicipal agencies, and organizations composed of public officials which are eligible for assistance under section 701(g) of the Housing Act of 1954, of not to exceed 66⅔ per centum of the cost in the case of an application with resepct to an area including only one municipality, and not to exceed 75 per centum of the cost in any other case, of—

"(1) making surveys of solid waste disposal practices and problems within the jurisdictional areas of such agencies and

"(2) developing and revising solid waste disposal plans as part of regional environmental protection systems for such areas, providing for recycling or recovery of materials from wastes whenever possible and including planning for the reuse of solid waste disposal areas and studies of the effect and relationship of solid waste disposal practices on areas adjacent to waste disposal sites.

"(3) developing proposals for projects to be carried out pursuant to section 208 of this Act, or

"(4) planning programs for the removal and processing of abandoned motor vehicle hulks.

"(b) Grants pursuant to this section may be made upon application therefor which—

"(1) designates or establishes a single agency (which may be an interdepartmental agency) as the sole agency for carrying out the purposes of this section for the area involved;

"(2) indicates the manner in which provision will be made to assure full consideration of all aspects of planning essential to areawide planning for proper and effective solid waste disposal consistent with the protection of the public health and welfare, including such factors as population growth, urban and metropolitan development, land use planning, water pollution control, air pollution control, and the feasibility of regional disposal and resource recovery programs;

"(3) sets forth plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this section;

"(4) provides for submission of such reports of the activities of the agency in carrying out the purposes of this section, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this section and for keeping such records and affording such access thereto as he may find necesary; and

"(5) provides for such fiscal-control and fund-accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the agency under this section.

"(c) The Secretary shall make a grant under this section only if he finds that there is satisfactory assurance that the planning of solid waste disposal will be coordinated, so far as practicable, with and not duplicate other related State, interstate, regional, and local planning activities, including those financed in part with funds pursuant to section 701 of the Housing Act of 1954.

"GRANTS FOR RESOURCE RECOVERY SYSTEMS AND IMPROVED SOLID WASTE DISPOSAL FACILITIES

"SEC. 208. (a) The Secretary is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

"(b) (1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of section 207(b) (2) of this Act; (B) is consistent with the guidelines recommended pursuant to section 209 of this Act; (C) is designed to provide areawide resource recovery systems consistent with the purposes of this Act, as determined by the Secretary, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

"(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

"(c) (1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

"(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Secretary for the purposes of this Act, and (iii) is consistent with the guidelines recommended under section 209, and

"(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

"(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

"(d) (1) The Secretary, within ninety days after the date of enactment of the Resource Recovery Act of 1970, shall promulgate regulations establishing a procedure for awarding grants under this section which—

"(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

"(B) provides deadlines for submission of, and action on, grant requests.

"(2) In taking action on applications for grants under this section, consideration shall be given by the Secretary (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

"(e) A grant under this section—

"(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b) (1) applies, the first-year operation and maintenance costs;

"(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1) (B)) for oprating or maintenance costs;

"(3) may not be made until the applicant has made provision satisfactory to the Secretary for proper and efficient operation and maintenance of the project (subject to paragraph (1) (B)); and

"(4) may be made subject to such conditions and requirements, in addition to those provided to in this section, as the Secretary may require to properly carry out his functions pursuant to this Act.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Secretary.

"(f) (1) Not more than 15 percent of the total of funds authorized to be appropriated under section 216(a) (3) for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

"(2) The Secretary shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

"RECOMMENDED GUIDELINES

"SEC. 209. (a) The Secretary shall, in cooperation with appropriate State, Federal, interstate, regional, and local agencies, allowing for public comment by other interested parties, as soon as practicable after the enactment of the Resource Recovery Act of 1970, recommend to appropriate agencies and publish in the Federal Register guidelines for solid waste recovery, collection, separation, and disposal systems (including systems for private use), which shall be consistent with public health and welfare, and air and water quality standards and adaptable to appropriate land-use plans. Such guidelines shall apply to such systems whether on land or water and shall be revised from time to time.

"(b) (1) The Secretary shall, as soon as practicable, recommend model codes, ordinances, and statutes which are designed to implement this section and the purposes of this Act.

"(2) The Secretary shall issue to appropriate Federal, interstate, regional, and local agencies information on technically feasible solid waste collection, separation, disposal, recycling, and recovery methods, including data on the cost of construction, operation, and maintenance of such methods.

"GRANTS OR CONTRACTS FOR TRAINING PROJECTS

"SEC. 210. (a) The Secretary is authorized to make grants to, and contracts with, any eligible organization. For purposes of this section the term 'eligible organization' means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

"(b) (1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Secretary, of any project operated or to be operated by an eligible organization, which is designed—

"(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste disposal and resource recovery equipment and facilities; or

"(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste disposal and resource recovery equipment and facilities.

"(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Secretary no such application shall be approved unless at such time or times and containing such information as he may prescribe, except that it provides for the same procedures and reports (and access to such reports and to other records) as is required by section 207(b)

(4) and (5) with respect to applications made under such section.

"(c) The Secretary shall make a complete investigation and study to determine—

"(1) the need for additional trained State and local personnel to carry out plans assisted under this Act and other solid waste and resource recovery programs;

"(2) means of using existing training programs to train such personnel; and

"(3) the extent and nature of obstacles to employment and occupational advancement in the solid waste disposal and resource recovery field which may limit either available manpower or the advancement of personnel in such field.

He shall report the results of such investigation and study, including his recommendations to the President and the Congress not later than one year after enactment of this Act.

"APPLICABILITY OF SOLID WASTE DISPOSAL GUIDELINES TO EXECUTIVE AGENCIES

"SEC. 211. (a) (1) If—

"(A) an Executive agency (as defined in section 105 of title 5, United States Code) has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste disposal activities, or

"(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste disposal activities,

then such agency shall insure compliance with the guidelines recommended under section 209 and the purposes of this Act in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

"(2) Each Executive agency which conducts any activity—

"(A) which generates solid waste, and

"(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this Act in conducting such activity.

"(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this Act in the disposal of such waste.

"(4) The President shall prescribe regulations to carry out this subsection.

"(b) Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Secretary to insure compliance with guidelines recommended under section 209 and the purposes of this Act.

"NATIONAL DISPOSAL SITES STUDY

"SEC. 212. The Secretary shall submit to the Congress no later than two years after the date of enactment of the Resource Recovery Act of 1970, a comprehensive report and plan for the creation of a system of national disposal sites for the storage and disposal of hazardous wastes, including radioactive, toxic chemical, biological, and other wastes which may endanger public health or welfare. Such report shall include: (1) a list of materials which should be subject to disposal in any such site; (2) current methods of disposal of such materials; (3) recommended methods of reduction, neutralization, recovery, or disposal of such materials; (4) an inventory of possible sites including existing land or water disposal sites operated or licensed by Federal agencies; (5) an estimate of the cost of developing and maintaining sites including consideration of means for distributing the short- and long-term costs of operating such sites among the users thereof; and (6) such other information as may be appropriate."

(c) Section 215 of the Solid Waste Disposal Act (as so redesignated by subsection (b) of this section) is amended by striking out the heading thereof and inserting in lieu thereof "GENERAL PROVISIONS"; by inserting "(a)" before "Payments"; and by adding at the end thereof the following:

"(b) No grant may be made under this Act to any private profitmaking organization."

SEC. 105. Section 216 of the Solid Waste Disposal Act (as so redesignated by section 104 of this Act) is amended to read as follows:

"SEC. 216. (a) (1) There are authorized to be appropriated to the Secretary of Health, Education, and Welfare for carrying out the provisions of this Act (including, but not limited to, section 208), not to exceed $41,500,000 for the fiscal year ending June 30, 1971.

"(2) There are authorized to be appropriated to the Secretary of Health, Education, and Welfare to carry out the provisions of this Act, other than section 208, not to exceed $72,000,000 for the fiscal year ending June 30, 1972, and not to exceed $76,000,000 for the fiscal year ending June 30, 1973.

"(3) There are authorized to be appropriated to the Secretary of Health, Education, and Welfare to carry out section 208 of this Act not to exceed $80,000,000 for the fiscal year ending June 30, 1972, and not to exceed $140,000,000 for the fiscal year ending June 30, 1973.

"(b) There are authorized to be appropriated to the Secretary of the Interior to carry out this Act not to exceed $8,750,000 for the fiscal year ending June 30, 1971, not to exceed $20,000,000 for the fiscal year ending June 30, 1972, and not to exceed $22,500,000 for the fiscal year ending June 30, 1973. Prior to expending any funds authorized to be appropriated by this subsection, the Secretary of the Interior shall consult with the Secretary of Health, Education, and Welfare to assure that the expenditure of such funds will be consistent with the purposes of this Act.

"(c) Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this Act for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this Act.

"(d) Sums appropriated under this section shall remain available until expended."

TITLE II—NATIONAL MATERIALS POLICY

SEC. 201. This title may be cited as the "National Materials Policy Act of 1970".

SEC. 202. It is the purpose of this title to enhance environmental quality and conserve materials by developing a national materials policy to utilize present resources and technology more efficiently, to anticipate the future materials requirements of the Nation and the world, and to make recommendations on the supply, use, recovery, and disposal of materials.

SEC. 203. (a) There is hereby created the National Commission on Materials Policy (hereafter referred to as the "Commission") which shall be composed of seven members chosen from Government service and the private sector for their outstanding qualifications and demonstrated competence with regard to matters related to materials policy, to be appointed by the President with the advice and consent of the Senate, one of whom he shall designate as Chairman.

(b) The members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

SEC. 204. (a) The Commission shall make a full and complete investigation and study for the purpose of developing a national materials policy which shall include, without being limited to, a determination of—

(1) national and international materials requirements, priorities, and objectives, both current and future, including economic projections;

(2) the relationship of materials policy to (A) national and international population size and (B) the enhancement of environmental quality;

(3) recommended means for the extraction, development, and use of materials which are susceptible to recycling, reuse, or self-destruction, in order to enhance environmental quality and conserve materials;

(4) means of exploiting existing scientific knowledge in the supply, use, recovery, and disposal of materials and encouraging further research and education in this field;

(5) means to enhance coordination and cooperation among Federal departments and agencies in materials usage so that such usage might best serve the national materials policy;

(6) the feasibility and desirability of establishing computer inventories of national and international materials requirements, supplies and alternatives; and

(7) which Federal agency or agencies shall be assigned continuing responsibility for the implementation of the national materials policy.

(b) In order to carry out the purposes of this title, the Commission is authorized—

(1) to request the cooperation and assistance of such other Federal departments and agencies as may be appropriate;

(2) to appoint and fix the compensation of such staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competition service, and without regard to the provisions of chapter 51 and subchapter III of such title relating to classification and General Schedule pay rates; and

(3) to obtain the services of experts and consultants, in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed $100 per diem.

(c) The Commission shall submit to the President and to the Congress a report with respect to its findings and recommendations no later than June 30, 1973, and shall terminate not later than ninety days after submission of such report.

(d) Upon request by the Commission, each Federal department and agency is authorized and directed to the greatest extent practicable, such information and assistance as the Commission may request.

SEC. 205. When used in this title, the term "materials" means natural resources intended to be utilized by industry for the production of goods, with the exclusion of food.

SEC. 206. There is hereby authorized to be appropriated the sum of $2,000,000 to carry out the provisions of this title.

And the Senate agree to the same.

JENNINGS RANDOLPH,
EDMUND S. MUSKIE,
THOMAS F. EAGLETON,
J. CALEB BOGGS,
HOWARD H. BAKER, JR.,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
JOHN JARMAN,
PAUL G. ROGERS,
WILLIAM L. SPRINGER,
ANCHER NELSEN,
Managers on the Part of the House.

Mr. RANDOLPH. Mr. President, I invite the Senate's attention to the conference report on the Resource Recovery Act of 1970. This legislation, passed by the Senate in early August, represents a

dramatic reorientation of the Federal effort in solid waste management.

This bill, H.R. 11833, extends for 3 years and extensively rewrites the Solid Waste Disposal Act of 1965. By shifting the emphasis from conventional waste disposal to the recycling and recovery of materials and energy from solid waste, this act represents an important step toward the alleviation of current solid waste problems and the long-range conservation and protection of the environment.

The Senate and House versions were similar in content and approach. The Senate bill originally was S. 2005, introduced by Senator MUSKIE, chairman of the Subcommittee on Air and Water Pollution, myself, and other members of the Committee on Public Works. The House bill was introduced by Representative PAUL ROGERS. The primary differences were in authorization figures, in the Senate's treatment of the Bureau of Mines involvement in solid waste, and in the contrast between the House's program for the construction of solid waste disposal facilities and the Senate's demonstration of areawide resource recovery systems.

The conference substitute authorizes $460,750,000 over 3 fiscal years for new and expanded programs under the Solid Waste Disposal Act, as well as $2 million to support a 2-year study by the National Commission on Materials Policy proposed by Senator BOGGS.

The Bureau of Mines in the Department of the Interior would continue its role in research on metal and mineral solid waste problems, subject to consultation with the Administrator of the Environmental Protection Agency to assure consistency with the purposes of the Solid Waste Disposal Act. The conference substitute authorizes for the Secretary of the Interior $8.75 million in fiscal year 1971, $20 million in fiscal year 1972, and $22.5 in fiscal year 1973.

As reported by the conference, the legislation follows the House and Senate mandate in expanding the basic Federal research program to emphasize resource recovery, and in authorizing in a new section 205 a study of important issues related to recycling. These issues—means of recovering materials and energy, changes in production and packaging practices, including disposal charges, to reduce wastes; the use of Federal procurement to develop market demand for recovered resources; and incentives and disincentives to recycling, including tax policies—were part of a 2-year study in a separate title in the Senate bill. The conference substitute makes it an ongoing study with annual reports. It should be clear that under this language, the Administrator would have authority comparable to that in section 204 to demonstrate at pilot scale any of the fruits of this study.

The conference substitute also provides for an expanded planning grant program which combines the similar language of the two bills. Grants for planning activities would be extended to municipal and intermunicipal agencies, where only State and interstate agencies are presently aided. These grants would include funds to prepare proposals for resource recovery systems demonstration grants and programs for the removal and processing of abandoned motor vehicle hulks. Grants for the implementation of plans, proposed by the House bill, have been dropped. The Federal share of planning grants is 66⅔ percent for single municipalities and 75 percent in all other cases.

The Senate bill proposed to add several sections to the act, which have been adopted in substance by the conference: a program of training grants for personnel in the design, operation, and maintenance of solid waste disposal and resource recovery equipment and facilities; a national disposal sites study; guidelines and technical information on solid waste handling to be published by the Administrator of the Environmental Protection Agency; and a requirement of compliance by Federal facilities and federally licensed activities with these guidelines.

The most important element of the conference report is the treatment of demonstration and construction grants. Rather than stay with a program of demonstrating resource recovery systems, as the Senate proposed, or a categorical construction grant program as in the House bill, the conferees blended the two into a sharply focused program for funding innovations in solid waste management.

The conference substitute authorizes grants for the construction of new or improved solid waste disposal facilities and the demonstration of resource recovery systems. These grants could reach 75 percent of the total design and construction costs, except that a single municipality constructing a facility—rather than a system—could receive only 50 percent. In the system demonstration projects, first-year operation and maintenance costs would also be eligible for funding.

All projects under this combined section 208 approach must be consistent with the guidelines called for by this act and with any planning for the area involved.

The combination of these approaches gives the solid waste disposal program maximum flexibility. Long-term solutions must rely on recycling; immediate improvements can be made in such subsystems as collection, transportation, processing, separation, and recovery or disposal.

In fiscal 1971, the conference substitute authorizes $41.5 million to carry out this section 208 and the other activities under the act. This will also give the Administrator the greatest possible flexibility to commit as much money as possible in fiscal 1971 for resource recovery systems and solid waste disposal facilities, yet utilize as much as necessary for other functions.

In fiscal year 1972, $80 million is authorized specifically for section 208 demonstration and construction grants, with $72 million for other activities. For fiscal 1973, $140 million is authorized for section 208, and $76 million for the remainder of the act. Of this money, no more than 15 percent of the authorization for section 208 in any 1 year can be granted in any one State.

Title II of the conference substitute is the amendment Senator BOGGS offered originally to the Senate bill. This creates a National Commission on Materials Policy, which would report by June 23, 1973, on future materials requirements, means for the extraction, development and use of materials susceptible to recycling or nonpolluting disposal, and the proper governmental agency to implement the national materials policy it recommends.

Mr. President, this conference report represents a valuable accommodation of the different approaches of the House and Senate. As chairman of the conference and of the Committee on Public Works, I wish to personally and officially stress that we have given an important redirection of the Federal effort in solid waste management from conventional disposal to innovative techniques of management and recycling of resources.

STATEMENT BY SENATOR MUSKIE

Mr. President, the knowledgeable chairman of our Subcommittee on Air and Water Pollution is necessarily absent this afternoon.

At the request of the distinguished junior Senator from Maine (Mr. MUSKIE), I ask unanimous consent that there be printed at this point in the RECORD a statement prepared by the Senator from Maine with reference to this matter. The Senator from Maine was one of the conferees.

There being no objection, Senator MUSKIE's statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR MUSKIE

Mr. President, the conference report on the Resource Recovery Act of 1970 combines the most useful and imaginative approaches to solid waste management included in the House bill, sponsored by Representative Paul Rogers, and the Senate bill, which I initially introduced and which was improved by the Subcommittee on Air and Water Pollution and the Senate Committee on Public Works.

Section 208 of the conference substitute for H.R. 11833 reflects the concern of the Rogers bill for funding innovative solid waste disposal facilities as well as the need to demonstrate areawide resource recovery systems.

Under Section 208 grants would be available to municipalities, States, or interstate or intermunicipal agencies to construct improved solid waste disposal facilities or to demonstrate areawide resource recovery systems. An improved solid waste disposal facility is one which advances the state of the art by applying new or improved techniques for reducing the environmental impact of solid waste. These facilities would be eligible for a Federal grant of 50% of the cost of construction in the case of a single municipality and 75% for other projects.

Resource recovery systems are eligible for 75% of the costs of design, construction, and first-year operation and maintenance costs. They must also include a means for distributing the costs among the users of the system.

The conferees authorized $80 million for fiscal 1972 and $140 million in fiscal 1973. No more than 15% of the annual authorization could be granted in any one State. While the conference bill does not specifically authorize funds for Section 208 in fiscal 1971, funds are available from the $41.5 million authorization for Section 208 grants to be allocated among States as demands require.

The total authorization figures in the conference substitute are basically those proposed by Representative Rogers' bill, scaled to what will be needed in fiscal 1971. In addition to the $41.5 million in fiscal 1971 and

the specific sums for section 208, the bill authorizes $72 million for fiscal 1972 and $76 million for fiscal 1973 for the remainder of the programs under the Solid Waste Disposal Act.

The Senate bill had eliminated the Act's separate authorization to the Secretary of the Interior for the Bureau of Mine's research in metal and mineral solid waste problems. The conference substitute accepts the position of the House, and authorizes for the Secretary of the Interior $8.75 million in fiscal 1971, $20.0 million in fiscal 1972, and $22.5 million in fiscal 1973, but requires that the Secretary consult with the Administrator of EPA before committing funds to any solid waste disposal project.

Several sections which the Senate bill added to the Act were accepted by the conference. These included a program of training grants, a national disposal sites study, and a requirement for compliance, with solid waste guidelines included in both House and Senate proposals, by Federal facilities and Federally licensed activities.

The language of the House and Senate bills was similar on amendments to the research and planning grants section of the Act. The conference agreement generally follows the House language for planning grants, except to add provision for grants to develop proposals for demonstration and construction grants and provision to plan programs for the removal of abandoned motor vehicles, which the Senate bill proposed. The conference agreement deleted provision for grants for the implementation of plans included in the House bill.

The conference also accepted Title II of the Senate bill, establishing the National Commission on Materials Policy. This was the amendment offered by Senator J. Caleb Boggs. It authorized the Commission to study and report by June 30, 1973 on materials policy and to ascertain which agency of the government should be responsible, on a continuing basis for implementing that policy. The Title includes an authorization of $2 million.

Senator Jennings Randolph, Chairman of the Senate Committee on Public Works and Chairman of the conference committee, deserves special recognition for his effort both in the formulation of the original Senate bill and in this agreement.

The Resource Recovery Act of 1970 will be a major weapon in the battle against the "third pollution." If adequate funding and manpower are provided for this program important steps can be taken to abate a growing menace to our water, air and land resources. The diseases that inadequate solid waste management foster and the aesthetic blight of litter and dumps can be eliminated.

These are the goals of this legislation. Its importance should be underscored. Once again Congress has taken the lead to deal with a difficult environmental problem. I urge adoption of the conference report.

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

Mr. RANDOLPH. Mr. President, I am delighted to yield to the distinguished Senator from Delaware.

Mr. BOGGS. Mr. President, I rise to express my support for the report by the committee on conference on H.R. 11833, the Resource Recovery Act of 1970.

There are numerous aspects of this legislation that are of great importance to the Nation. However, I should like to confine my remarks to two aspects in the legislation.

First, I wish to discuss the funds authorized under section 208 for grants to demonstrate and construct innovative facilities and systems for resource recovery systems and solid waste disposal. No specific sum is authorized for this program during the current fiscal year. This decision was taken due to the uncertainty as to the number of States and cities that could prepare proposals in the remaining few months of fiscal year 1971. A total of $41,500,000, however, is authorized for the entire bill during fiscal year 1971. I anticipate that the Bureau of Solid Waste Management would seek a significant sum, possibly as much as $20 million, to support section 208 projects this fiscal year, for section 208 lies at the heart of what this legislation seeks to accomplish.

There is a great need to seek technologically innovative systems and facilties for the purpose of resource recovery and solid waste disposal. The need was amply demonstrated during extensive hearings on the subject by our Committee on Public Works, and I am convinced we must move ahead rapidly on this subject.

In addition, Mr. President, I wish to note title II of this bill. This title appeared in the bill passed by the Senate. It creates a National Commission on Materials Policy to examine and analyze the need for a national materials policy. The committee on conference added to the Senate language a requirement that the Commission make recomendations on which Federal agency is best equipped to oversee, on a continuing basis, the implementation of the national materials policy once the Commission's activities cease. This directive was implicit in the original Senate bill. Nevertheless, I believe the new language is helpful as it makes this directive more specific.

Again, Mr. President, I wish to commend the members of the committee on conference for their work on this bill. The chairman of the full committee (Mr. RANDOLPH) was particularly effective in his arguments in support of the Senate position. I commend him. I also wish to thank the Members of the House who served on the committee on conference for their most helpful and effective effort in seeking to resolve the differences between our two bills.

This bill, H.R. 11833, should prove to be a landmark in our effort to reduce solid waste and thus enhance our environment, I commend it to my colleagues.

Mr. COOPER. Mr. President, although not a member of the conference committee on the bill, H.R. 11833, the Resource Recovery Act of 1970, as ranking minority member of the Committee on Public Works, I want to commend the Senate conferees for bringing back this important bill in basically the same form as it passed the Senate.

This represents the second major piece of environmental legislation coming from the Committee on Public Works this session, the other being the Water Quality Improvement Act of 1970 signed into law in April. In addition, the committee is presently in conference with the House on the National Ambient Air Quality Standards Act of 1970 which passed the Senate last month.

As the environmental problems grow, the legislative response becomes more difficult and complex and the committee has been steadfastly working toward providing responsive legislation. I expect that when we resume after the elections we will consider water pollution legislation, thus rounding out a very successful and historically significant session of Congress with respect to the environment.

The committee, particularly the chairman, Senator RANDOLPH, the subcommittee chairman, Senator MUSKIE, and Senator BOGGS, the ranking minority member of the Subcommittee on Air and Water Pollution, all of whom served as conferees, and Senators BAKER and EAGLETON, who were also conferees deserve special credit. One of the trademarks of the Committee on Public Works has been the bipartisan nature of its activity and the fact that all members participate fully. Even in these difficult times this pattern has been adhered to and the entire committee stands as an outstanding example of how the legislative process can and should work.

Mr. BAKER. Mr. President, the Senate members of the conference committee on H.R. 11833 have brought back to the Senate a bill which in all substantial respects parallels the bill passed by the Senate on July 31.

As several members of the Committee on Public Works pointed out on the floor when the bill was passed, this is very important legislation in that it recognizes the urgent needs of the country in the management of solid waste while being, at the same time, fiscally responsible. The conference bill is consistent with these purposes. In only one respect has there been significant change from the Senate version of the bill, and that change results from the incorporation of certain elements of the House bill providing for the construction of new and improved solid waste facilities. There is no intention on the part of the conference committee that this bill be construed as establishing a new categorical grant-in-aid program under which every community in the Nation would be eligible for Federal construction assistance. The bill does provide, however, for Federal assistance designed to stimulate the development of new systems and technology necessary to respond to the growing solid waste crisis. Following the experience gained under this federally assisted research and development program, systems and technology will be available for general application at a later date.

The conference bill is consistent with the report of the Public Works Committee that accompanied the Senate bill. I ask unanimous consent that there be printed at this point in the RECORD pertinent excerpts from that report.

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

RESOURCE RECOVERY SYSTEMS

After analysis of the completed hearing record on pending solid waste legislation, particularly testimony on Section 208 of the bill, the Committee determined that the authorization of a new unrestricted construction grant program for solid waste disposal is not justified at this time. As the bill reported from the Committee clearly reflects, there is an urgent need to redirect the thrust of waste management from disposal to the maximum recovery of reusable materials and energy. The authorization of a construction

grant program at this time could result in a massive commitment to presently available technology oriented towards disposal. To avoid stimulating investment in inadequate technology the Committee has substituted a system demonstration provision for the proposed construction grant provision.

At the same time the Committee recognizes that many communities across the Nation, particularly rural and small municipalities, have severe waste disposal problems, with constraints on past practices of waste management resulting from compliance with air and water quality standards. The cost and administration of disposal techniques such as sanitary land fill and modern incineration are expenses that should be borne by the producers of such waste, whether industrial or residential household.

The Committee does recognize that information regarding technology developed in part pursuant to the Solid Waste Disposal Act of 1965 regarding sanitary landfill and improved incineration has not been generally available to the communities throughout the Nation. Therefore, Section 209(c) of the reported bill would authorize a greatly expanded information dissemination function for the Secretary, so that all areas of the Nation can benefit from knowledge of sound waste management practices and technology currently available.

Consistent with the judgment that the Nation cannot afford merely to dispose of the tremendous volume of material that is generated by our industrial and consuming society, especially in urban concentrations, and recognizing further that a great deal of research has been done on resources recovery, the Committee has substituted for the construction grant proposal a new program of grants to municipalities to achieve demonstration of resources recovery systems on an areawide basis. This program is designed to stimulate, in the shortest time, the development of systems of technology necessary to manage growing volumes of community wastes and achieve maximum recovery of materials and energy from such wastes.

Throughout the hearings on resources recovery, testimony was received describing various technologies and systems to achieve resources recovery. The Committee believes it is urgent national policy to move these proposals into actual application and operation in as many different areas, from large metropolitan complexes to smaller communities, as necessary to demonstrate innovative and responsive resources recovery systems. Such systems can then be applied, as appropriate, to all areas of the country in which similar problems exist.

The program would provide 75 percent Federal assistance to develop and construct advanced systems of resources recovery in various categories of communities established by the Secretary in order to demonstrate systems applicable in different urban and rural conditions.

It is the Committee's intent that the program authorized shall be one which will, in many respects, parallel the type of research and development procurement conducted by the Department of Defense and the National Aeronautics and Space Administration in the sense that the Secretary is authorized to promulgate regulations describing the categories of systems for which applications will be received, specifying that such applications are to be received by a certain date and further establishing guidelines for review of such applications.

Grants are to be awarded only to those applications which the Secretary finds to be clearly superior with respect to the system of resources recovery proposed, the economics of the system and, the potential for general application for solution of the myriad of waste problems. It should be emphasized that the selection procedure, thereby established is not competition based strictly upon low cost, but rather is competition to stimulate innovative systems, of general application which are both economically and commercially viable and which recover the maximum amount of materials and energy.

The Committee was particularly impressed with testimony received in San Francisco describing a proposed municipal resources recovery system for the San Francisco Peninsula area, and the advanced state of development which that system proposes. The Committee received many other impressive descriptions and displays. It is the Committee's judgment that well researched methods, similar to those described in California, should be given an on-site demonstration application as soon as possible. The Nation can no longer afford to await more study and analysis and must move from the great deal of information presently available to full scale demonstration of recovery systems.

It is expected by the Committee that responsible government officials in municipalities and communities across the country will take advantage of the program proposed in the bill and will develop proposals for the most advanced and responsive systems imaginable, for consideration by the Secretary. The Committee encourages such municipalities to work very closely with relevant private industry talent and resources through contract or otherwise, to develop systems which will provide increased public service in waste management, combined with maximum recovery of materials and energy in such waste and economic viability through the use of user charges and markets for recovered material and energy.

The Committee looks upon the proposed demonstration grant program as a method of stimulating not just the development of technology and its areawide application, but it will also cause communities to study their own circumstances with respect to waste management. Through such studies, communities will be able to provide better public service to their citizens in the future and be in a position to apply systems that are developed pursuant to these demonstration grants as they become available. The Committee hopes that communities will take immediate advantage of this program, and seeks to encourage that result by Section 207(a)(3) of the reported bill, which would authorize Federal assistance to develop proposals for resource recovery demonstration grants for submission to the Secretary.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The Senate resumed the consideration of 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.

Mr. DODD. Mr. President, I call up my amendment No. 1034 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. DODD) proposes an amendment as follows:

On page 39, between lines 7 and 8, insert the following and renumber succeeding terms accordingly:

"(4) Chlordiazepoxide.

"(5) Diazepam."

TRANQUILIZERS LIBRIUM AND VALIUM

Mr. DODD. Mr. President, I do not think this amendment will take very long. I do not intend to ask for a rollcall vote. I say that because I think the Members of the Senate will agree that this amendment should be agreed to.

Mr. President, I propose an amendment to the pending H.R. 18583 which would add to title II of that bill controls over two widely abused tranquilizers, known in the trade as librium and valium.

I do so because of the fact that when drug legislation passed this body unanimously in January of this year, controls over librium and vallum were included in S. 3246, the Controlled Dangerous Substances Act.

The other body dropped from its bill, the pending H.R. 18583, the controls which the Senate included in our bill without controversy during floor debate on the mesaure.

Since these two drugs have serious addictive propensities, this amendment is introduced to reintroduce the necessary elements of balance and realistic concern into the legislation.

Drug addiction in the United States has reached frightening proportions.

Appearing before the Subcommittee on Juvenile Delinquency, John Ingersoll, the Director of the Bureau of Narcotics and Dangerous Drugs, said:

> The issue of drug abuse and misuse in the United States is one of increasing concern in the minds of so many Americans. It is a problem that is critical and requires congressional attention if we are to meet effectively the challenge it presents to our system of justice. There is little doubt that addiction and drug abuse have reached epidemic proportions over the last several years. No community has been left unscathed. No group within the community has remained untouched. It has permeated all segments of our society and we can now rightfully consider it to be an American dilemma.
>
> The types of drugs abused have grown enormously in the last decade. While the use of narcotics continues to be a growing problem, it is overshadowed by the rapid increase in the use of the amphetamines, the barbiturates, and the hallucinogens, which include marihuana. We must keep in mind that to focus attention solely on today's drug of choice, which is marihuana, would be to miss the central issue. We must examine the total picture to insure that the drug of choice of tomorrow does not create the problems that we face with marihuana today. Therefore, I earnestly request that this subcommittee recognize the fact that it is legislating not just the drug problem of today, but also the prospective drug problems of the 1970's.

While I must express satisfaction that the urgently needed bill finally was passed by the House almost 9 months later, I must also express deep concern, indeed consternation, at the amended version which excludes librium and valium from the regulatory powers of the Department of Justice which will regulate its enforcement.

To understand fully the implication of this amendment, one must go back to the hearings of the Subcommittee on Juvenile Delinquency which were held for 8 days in September and October 1969.

These hearings were certainly among the most extensive and exhaustive ever undertaken by the subcommittee. We

heard physicians, psychiatrists, psychologists, people representing the pharmaceutical industry, and executives from the Bureau of Narcotics and Dangerous Drugs.

Almost everybody who testified at these hearings agreed that the new law would be a substantial step toward the control of the increasingly dangerous drug culture in this country. There were, however, a few notable exceptions.

Hoffman-LaRoche, the manufacturers of the tranquilizers known as librium and valium, strenuously objected to the inclusion of their products in the schedule devised under the law. Their allegation was that these drugs were not addictive or even habituating in any sense of the word; that they were not aware of a single case which conclusively proved the addictive or habituating potential of these products.

It is clearly evident, however, that their objection to the inclusion in the law of librium and valium are not so much based on sound medical practice as they are on the slippery surface of unethical profits.

In one recent year, sales of librium and valium amounted to nearly $200 million. Given the profit margin in the pharmaceutical industry which amounts to 21 percent, the highest of any industry in this country, the profits thus amount to more than $40 million, a tidy sum which Hoffman-LaRoche has done a great deal to protect.

Thus the fee reportedly paid by Hoffman-LaRoche to a Washington law firm to lobby the librium-valium provision out of the bill is three times that of the total subcommittee staff budget for this year. No wonder that the Senate first, and then the House, was overrun by Hoffman-LaRoche lobbyists.

During the hearings which we held last year, ample evidence of the addictive qualities of librium and valium was produced.

Their inclusion as controlled drugs was emphatically endorsed by Dr. Roger Egeberg, the then Secretary for Health and Scientific Affairs of Health, Education, and Welfare.

And John Ingersoll, the Director of the Bureau of Narcotics and Dangerous Drugs, testified that a very limited survey, covering 2½ years, showed that 1,353 people attempted suicide using librium or valium, or both; of these, 93 people were successful in their attempts to take their own lives. These drugs simply are not as safe and harmless as the maker makes them out to be.

Perhaps more important still, a survey of pharmacies in only six States: Massachusetts, Rhode Island, New York, Florida, Texas, and California indicated inventory shortages of librium and valium amounting to 753,434 doses.

Traditionally, it is only the addictive drug which is most likely to show shortages, caused by larceny, illegal diversion, and the like. Nobody steals such things as aspirin, or calamine lotion, because these things are useless to the illegal trader or user of habituating drugs.

In this connection, it is important to note the memorandum submitted by the Bureau of Narcotics and Dangerous Drugs, dealing with the two specific drugs, librium and valium, which I would like to introduce into the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

EXHIBIT 1

REPORT ON ABUSE OF LIBRIUM AND VALIUM SUBMITTED TO THE SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY BY U.S. DEPARTMENT OF JUSTICE, BUREAU OF NARCOTICS AND DANGEROUS DRUGS.

INTRODUCTION

The evidence introduced at the original hearing dealt with examples of abuse or studies showing the potential for abuse which were developed prior to August, 1966. To determine the current status of these drugs' potential for abuse, the Bureau of Narcotics and Dangerous Drugs initiated a limited survey within each of the Bureau's 14 Regions for the years 1967 through 1969. The study was quite restricted in that generally only the headquarters city of the Region, the State agencies wherein the Regional headquarters is located and one additional city were covered. Great reliance was placed on the local authorities to provide information which they already had and to initiate new information gathering programs.

The following information is summarized by State, by Region. Complete back up material is on file with the Bureau.

GENERAL SUMMARY

State and number of pharmacies audited	Shortages	
	Librium	Valium
I. Evidence relating to diversion:		
Massachusetts (3)	65,499	39,959
Rhode Island (2)	2,023	1,989
New York (22)	102,270	84,376
Florida (10)	141,673	190,501
Texas (6)	68,171	17,530
California (13)	20,800	18,643
Total	400,436	352,998
Total, both drugs	753,434	

II. Individuals taking Librium and/or Valium on their own initiative or not pursuant to sound medical advice:

Attempted Suicides, 1,256.

Suicides, 97.

Adult "Accidental Ingestion", 929.

III. Illegal activities involving Librium and/or Valium: 99.

REGION 1. MASSACHUSETTS

I. Accountability audit investigations of pharmacies were conducted jointly by the Bureau of Narcotics and Dangerous Drugs and the Massachusetts Board of Pharmacy. A summary of the findings of these audits follows:

Pharmacy	Period covered	Shortages [1]	
		Librium	Valium
Medford	May 1969 to October 1969	2,730	1,930
F. & E. Bailey & Co.	April 1969 to October 1969	1,950	3,285
Star	do	60,819	34,744
Total		65,499	39,959
Total, both drugs		105,458	

[1] By number of capsules. Various dosage units for each drug are combined in totals. Not all dosage units or both drugs audited in every store.

II. The following table contains a summary of some of the cases in which Librium and Valium were detected during police investigation of other drug offenses in Massachusetts:

Date, August 1969; Cambridge—Defendant arrested for possession of marihuana. Search of premises revealed marihuana, Librium and other dangerous drugs.

Date, April 1969; Cambridge—Defendant arrested for possession of marihuana and barbiturates. Valium also seized at time of arrest.

Date, April 1969, Cambridge—Three defendants arrested for unlawful possession of marihuana. Librium also found.

Date, February 1969; Cambridge—Acting on a search warrant for marihuana and LSD, police uncovered LSD and Librium.

Date, September 1969; Cambridge—Marihuana, Librium and LSD taken in drug raid.

Date, March 1969; Medford—Defendant originally arrested for speeding found to be in possession of narcotics and Librium.

Date, March, 1969; Medford—Case involved forged prescription for Librium and forged application for MEDICAID. Five defendants arrested in raid and marihuana, Librium and other dangerous drugs seized. Defendants previously involved with glue sniffing.

Date, 2/69; Medford—Defendants arrested for robbery of pharmacy in which narcotics, DACA drugs, Librium and Valium were taken. Previously been arrested in other possession of harmful drugs cases.

Date, 7/69; Sommerville—Defendant arrested in connection with drug store robbery. Drugs recovered included narcotics, DACA drugs, and Librium.

Date, 4/69; Dedham—Four juveniles arrested in automobile found to be in possession of Librium and marihuana.

III. A survey of several public health facilities, poison control centers and law enforcement agencies within the State of Massachusetts revealed the following data on incidents indicative of abuse of Librium and Valium:

Drug	Suicide	Attempted suicide	Adult "accidental ingestion" [1]
Librium alone		15	11
Librium plus other drugs	1	13	5
Valium alone		7	7
Valium plus other drugs		5	
Total	1	40	23

[1] Includes ingestion by children over 12 years of age and adults under 60 which, though not classified as suicide attempts by responsible medical or public authorities, indicate suicidal situations because of other drugs ingested simultaneously with the Librium and/or Valium or for other reasons.

REGION 1. RHODE ISLAND

I. Accountability audit investigations were conducted on two pharmacies by the State of Rhode Island Division of Drug Control. A summary of their findings follows:

Pharmacy	Period covered	Shortages [1]	
		Librium	Valium
Adams Drug Store	January 1968 to October 1969	1,555	636
Adams Drug Co.	October 1968 to November 1969	468	1,353
Total		2,023	1,989
Total, both drugs		4,012	

[1] By number of capsules. Various dosage units for each drug are combined in totals. Not all dosage units or both drugs audited in every store.

II. The following is a summary of incidents indicative of abuse of Librium and Valium which were received from public health officials in Rhode Island for the period 1967–1968.

Drug	Attempted suicide	Suicide	"Kicks"	Adult accidental ingestions[1]
Librium alone	5	1	.....	
Librium plus other drugs	4	.....	1	1
Valium alone	2	.....	.....	
Valium plus other drugs	1	.....	.....	
Total	12	1	1	1

[1] Includes ingestion by children over 12 years of age and adults under 60 which, though not classified as suicide attempts by responsible medical or public authorities, indicate suicidal situations because of other drugs ingested simultaneously with the Librium and/or Valium or for other reasons.

REGION 1. CONNECTICUT

Police authorities of the State of Connecticut reported for 1968 twelve criminal cases where the defendants were found to be in possession of Librium in violation of the law.

REGION 2. NEW JERSEY

I. The Professional Board of Inspectors of the New Jersey State Board of Pharmacy initiated six investigations of pharmacies from 1968 to the present which resulted in undercover purchases of Librium (no attempt was made to purchase Valium). Each store was subsequently involved in disciplinary action for these illegal sales.

Pharmacy	Number of sales	Amount of Iibrium purchased	Board action
White's	3	535	$600 fine.
Lebow's Pharmacy, Inc.	8	110	$2,500 fine plus license suspended for 14 days.
Belmont	2	20	$100 fine.
Roseville Drug Center.	4	50	$500 fine.
Edwards	2	35	Do.
Phillips	3	35	License suspended for 14 days.
Total	22	785	

II. A survey of the Newark, New Jersey Police Narcotic Squad for the year 1968 revealed the following:

Case No. 5790: 12/7/68, 1 defendant: Creating a disturbance and illegal possession of Tuinal and Librium.

Case No. 6032: 2/20/68, 2 defendants: Illegal possession of Librium and Heroin.

Case No. 5879: 11/22/68, 1 defendant: Illegal possession of Librium and marihuana.

Case No. 5433: 7/28/68, 3 defendants: Illegal possession of Librium and loaded firearms.

REGIONAL 2. NEW YORK

I. An examination of the records of the New York State Board of Pharmacy from 1967 to date revealed that out of a total of thirty-seven illegal drug sales made to inspectors of the Board by pharmacies, Librium and/or Valium were involved in ten of the sales. Accountability audit investigations were made by the Bureau of Narcotics and Dangerous Drugs in conjunction with the State authorities in the ten stores which had illegally sold the Librium and Valium and in twelve other stores involved in illegal sales of drugs. Twenty of these audits were conducted in New York City and two in Buffalo. The audits covered the period from January 1 to September 26, 1969. A summary of the findings of these audits follows:

Drug short	Number of stores in which drug short	Amount to be accounted for from Jan. 1, 1969, to Sept. 26, 1969	Amount short	Percent short
Librium caps, 5 mgs	14	72,800	23,723	32.58
Librium caps, 10 mgs	19	217,150	78,547	36.17
Valium tabs, 2 mgs	13	57,900	21,717	37.50
Valium tabs, 5 mgs	16	141,400	62,659	44.31
Total		489,250	186,646	[1] 38.14

[1] Average.

II. An examination of the records of the New York City Poison Control Center for the years 1967, 1968 and the first nine months of 1969, reveals numerous incidents of excessive ingestion of Librium, Valium and other tranquilizers. Although the causes of injury are not available for the years 1967 and 1968, from the nature of the operation of the Poison Control Centers they can be attributed to either accidental or intentional (suicidal) overdoses. For the cases reported in the first nine months of 1969, it is known that ten involved attempted suicides. One of the cases involved an accidental overdose by an adult who admitted he illegally obtained the Librium from one of the pharmacies discussed in the previous section. A summary of the results of the examination of the Poison Control Center records follows. The figures do not contain incidents of ingestion by children under 12 years of age or adults over 60 years of age.

III. Information obtained from the files of the New York State Department of Health for the years 1967 and 1968 also shows 223 incidents of poisonings involving Librium and 114 involving Valium, either alone with each other or in conjunction with other harmful drugs. Although the information generally did not distinguish between suicides, attempted suicides and accidental ingestions, the age of the person and other drugs ingested indicated a suicidal tendency in 55 of these cases, at least one of which resulted in death. The figures do not contain incidents involving children under 12 years of age or adults over 60.

Drug	1967	1968	1969 (Jan. 1–Sept. 30)
Librium	173	205	21
Valium	84	105	20
Unspecified tranquilizers	17	19	.....
Total	274	329	41

IV. An examination of the records of the New York City Medical Examiners revealed several examples of deaths in which Librium and Valium were involved. These findings are summarized below:

REGION 2—NEW YORK

Date of death	Sex	Age	Laboratory findings
November 1967	Female	26	Librium metabolite.
April 1967	do	59	Librium.
August 1967	Male	46	Librium poisoning.
Do	do	45	Librium and Placidyl.[1]
August 1968	Female	45	Acute barbiturate poisoning.[2]
September 1968	do	27	Acute barbiturate poisoning.[3]
Do	do	57	Overdose of Seconal.[4]
December 1968	do	43	Overdose of Librium.
Do	do	35	Overdose of Librium and Darvon.
February 1968	Male	40	Placidyl.[5]
August 1968	Female	36	Darvon.[6]
January 1968	Male	43	Overdose of unknown drugs.[7]
February 1968	Female	49	Barbiturates and Placidyl found.[7]
April 1968	do	58	Barbiturates found.[8]
June 1968	do	39	Barbiturates and Doriden detected.
July 1968	Female	35	Barbiturates and morwhinne.[10]
September 1968	do	23	Overdose of Valium.[9]
June 1968	Male	25	Overdose of Librium.
January 1969	Female	33	Alcohol detected.[2]
Do	Male	40	Amobarbital and Secobarbital found[9]
May 1969	do	43	Phenothazine and Impramine found.[3]
Do	do	26	Valium found.
June 1969	Female	76	Barbiturates found.[11]
Do	Male	26	Darvon found.[12]
Do	Female	51	Barbiturates found.[13]
Do	Male	50	Amobarbital and Secobarbital found.[2]
Do	Female	58	Barbiturates found.[14]
February 1969	Male	39	Librium and Darvon found.[15]
March 1969	Female	38	Overdose of Librium, Benedryl and barbiturates.
June 1969	Male	23	Opiates not detected.[16]

[1] Vials of Librium, Doriden, Tuinal, and Placidyl found at scene of death.
[2] Librium found at scene of death.
[3] History of taking Librium.
[4] History of suicidal ingestion of Librium and Seconal.
[5] Librium, Antobuse, and Chloral Hydrate found at scene of death.
[6] 2 empty boxes of Librium and Darvon found at scene of death.
[7] History of taking Valium, Doriden, and Thorazine.
[8] Empty bottle of Valium and barbiturate found at scene of death.
[9] History of using Valium and Doriden.
[10] History of using Valium and Seconal.
[11] Suicide note and empty bottles of Valium, Librium, and sleeping pills found at scene of death.
[12] 9 empty vials of Librium, Darvon, and other drugs found at scene of death.
[13] Librium and Tuinal found at scene of death.
[14] Suicide note, Librium, Valium, and Seconal found at scene of death.
[15] Empty vials of Valium, Librium, and Darvon found at scene of death.
[16] History of using marihuana and thorazine. Found dead with Valium and Mellaril nearby.

REGION 3. DELAWARE

Information obtained from various authorities in the State of Delaware reveal the following incidents of drug abuse indicative of abuse of Librium:

1. One suicide attributed to Librium.
2. Four adult deaths where Librium, either alone or in conjunction with other drugs, was found in the system.
3. The F.B.I. reported the case of an individual who was found nude outside an apartment building posing as a statue. He was found to be under the influence of LSD. In his apartment were found 24 hypodermic needles which were stolen from a VA hospital, and a 10 ounce bag of Librium.

REGION 3. NEW JERSEY (MIDDLE AND SOUTHERN NEW JERSEY)

Information obtained from various public health officials in Southern and Middle New Jersey revealed the following incidents in-

volving Librium and Valium which were indicative of abuse:

Drug	Attempted suicides	Adult accidental ingestions
Librium alone	22	4
Librium plus other drugs	1	
Valium alone	14	
Total	37	4

[1] Includes ingestion by children over 12 years of age and adults under 60 which, though not classified as suicide attempts by responsible medical or public authorities, indicate suicidal situations because of other drugs ingested simultaneously with the Librium and/or Valium or for other reasons.

REGION 3. PENNSYLVANIA

I. A survey of several public health facilities, poison control centers and law enforcement agencies within the State of Pennsylvania revealed the following data on incidents indicative of abuse of Librium and Valium:

Drug	Attempted suicide	Adult "accidental ingestions" [1]	Adult deaths (drugs found in system) [2]
Librium alone	33	5	8
Librium plus other drugs	5	1	
Valium alone	6	2	2
Valium plus other drugs	1	1	
Total	45	9	10

[1] Includes ingestion by children over 12 years of age and adults under 60 which, though not classified as suicide attempts by responsible medical or public authorities, indicate suicidal situations because of other drugs ingested simultaneously with librium and/or valium or for other reasons.

[2] Information supplied by Philadelphia County medical examiner's office.

REGION 4—MARYLAND

1. The following information was received from the Baltimore Medical Examiner's Office concerning deaths where Librium was involved:

Age 39, Sex Female, intoxication, alcohol, Librium and Placidyl.

Age 24, Sex Male, overdose Librium and Darvon. Known to use narcotics and LSD (ruled suicide).

Age 65, Sex Female, overdose Tuinal, Librium, Mellaril.

Age 35, Sex Male, overdose Dilantin, Librium.

Age 57, Sex Male, overdose Librium and Darvon.

Age 23, Sex Female, overdose Librium and barbiturates (ruled suicide).

II. Information obtained from the Maryland Poison Information Center, Baltimore City Health Department, and several hospitals in Maryland and Virginia revealed 63 cases of adult ingestions of Librium and Valium:

REGION 5—FLORIDA

I. During 1969, the Florida State Board of Pharmacy conducted accountability audits for Librium and Valium in 10 pharmacies only. The results of the audits follow:

Pharmacy	Period covered	Shortages [1] Librium	Shortages [1] Valium	Action by Board of Pharmacy
1. Corazon de Jesus	January 1968–February 1969	34,581	46,310	Pending.
2. Andres' Pharmacy, Inc.	July 1968–March 1969	37,339	37,669	Fine.
3. Farmacia Continental	January 1968–March 1969	23,298	36,296	Pending.
4. Williams City Drug	January 1968–May 1969		2,080	Hearing received.
5. San Roque	January 1969–August 1969	743	1,685	Do.
6. Drug Center	January 1968–May 1969		10,885	Hearing scheduled.
7. Riverside Prescription	July 1968–March 1969			None.
8. Williams Rexall	January 1968–May 1969		4,091	Probation.
9. Coral Way	January 1969–July 1969	4,218	4,367	Hearing scheduled.
10. Central	January 1968–April 1969	41,494	47,118	License revoked.
Total		141,673	190,501	
Total, both drugs		332,174		

[1] By number of capsules. Various dosage units for each drug are combined in totals. Not all dosage units or both drugs audited in every store.

II. A survey of numerous public health facilities, poison control centers and law enforcement agencies within the State of Florida revealed the following data on incidents indicative of abuse of Librium and Valium.

Drug	Suicide	Attempted suicide	Adult "accidental ingestion" [1]	Illegal sale, possession
Librium alone				3
Librium—no record of other drugs		23	10	
Librium plus other drugs	2	1		1
Valium alone		1	1	
Valium—no record of other drugs		4	7	
Valium plus other drugs				2
Total	2	28	18	6

[1] Does not include persons under 12 or over 60 or persons whose age is unknown. An ingestion is classified "accidental" unless a physician or competent public official has specifically ruled that it was suicidal attempt. Questionable cases classified as accidental.

REGION 5. GEORGIA

I. A survey of numerous public health facilities, poison control centers and law enforcement agencies within the State of Georgia revealed the following data on incidents indicative of abuse of Librium and Valium.

Drug	Suicide	Attempted suicide	Adult [1] accidental ingestion	Illegal sale, possession
Librium alone				
Librium—no record of other drugs		2		20
Librium plus other drugs		2		23
Valium alone				
Valium—no record of other drugs		2		17
Valium plus other drugs				3
Total		6		63

[1] Does not include persons under 12 or over 60 or persons whose age is unknown. An ingestion is classified accidental unless a physician or competent public official has specifically ruled that it was suicidal attempt. Questionable cases classified as accidental.

REGION 5. SOUTH CAROLINA

A case report was received by the Columbia, South Carolina Office of the Bureau of Narcotics and Dangerous Drugs from the Office of Naval Intelligence concerning the abuse of dangerous drugs by a young Navy WAVE. The subject, a rather immature and highly emotional person, admitted to taking various dangerous drugs off and on over a period of two years. The drugs abused included Librium, Valium, Ritalin and Meprobamate. On two occasions the girl attempted suicide. Once with Librium and Darvon and the second time with Valium alone. The drugs in question were obtained both by prescription and by pilferage. She admitted to giving some of these drugs to her friends on various occasions but denied selling them. The Navy did not institute court-martial action nor was any action initiated against the girl by the Bureau of Narcotics and Dangerous Drugs.

REGION 6. MICHIGAN

Information obtained from hospitals in Michigan indicated the following suicide attempts involving Librium:

Pontiac General Hospital: Two cases of attempted suicide with Librium during 1968.

Blodgett Hospital: Three cases of attempted suicide with Librium during 1967–1968.

St. Joseph Hospital (Ann Arbor): Twenty-three year-old female attempted suicide with Librium in 1968.

Fifty-two year-old female attempted suicide with Librium in 1968.

Thirty year-old female attempted suicide with Librium and Donnatal in 1968.

REGION 6. OHIO

I. The Cuyahoga, Ohio, County Coroner's Office provided the following information relating to deaths involving Librium and Valium:

Age 51, sex female, June 1967: Suicide—Valium in combination with other drugs.

Age 47, sex female, August 1967: Suicide—Librium, barbiturates and other drugs.

Age 49, sex male, August 1967: Librium and Doriden.

Age 58, sex male, November 1968: Probable suicide—Valium and Elavil.

II. Information obtained from the Good Samaritan Hospital for the year 1967 revealed the following:

One case of attempted suicide involving Librium and Darvon.

One case of attempted suicide involving Librium, Valium, alcohol and Darvon.

REGION 7. ILLINOIS

I. The Chicago Police Department reported 18 cases involving illegal sale and/or possession of Librium for the period January 1, 1967 to August 31, 1969. In four of the cases the persons were sentenced by the court. The remaining cases either are pending or have been discharged, usually because the evidence was obtained by a faulty warrant.

II. The Illinois Department of Public Health reported the following deaths involving Librium and Valium for the years 1967–1969.

Drug	Age	Sex	Date	Circumstances
Librium	63	M	August 1966	Suicide.
Do	60	F	April 1966	Accident.
Librium, Teldrin	58	M	May 1966	Undetermined.
Librium, Darvon, opiate	25	M	May 1967	Do.
Librium	45	M	August 1967	Do.
Valium	60	F	September 1967	Do.
Chloral hydrate	42	F	October 1967	Suicide.
Valium, aspirin, thoraxine, stelazine, potassium chloride, diazide, nardel, dexedrine.	47	F	December 1967	Suicide.
Librium	46	F	July 1968	Undetermined.
Do	72	F	August 1968	Suicide.
Librium, meprobamate	38	M	July 1968	Do.
Valium, chlorpromazine	55	M	May 1958	Accident.
Valium, triavil	56	F	September 1968	Undetermined.

III. The Illinois Department of Public Safety, Division of Narcotic Control, reported the following cases of illegal activities involving Librium and Valium during the period July 1967 to July 1969

Circumstances	Case No.	Date
Large number of 25 mg. Librium and 55 cigarettes impregnated with Librium purchased by State narcotic agent.	S-316-D	August 1967.
Valium—illegal possession	S-333-D	January 1967.
Librium—illegal possession	C-220-D	December 1967.
Librium and Valium—illegal possession	S-559	Do.
Librium—illegal possession	S-353-D	February 1968.
Do	S-612	May 1968.
Librium purchased by State narcotic agent from nonpharmacist in drugstore.	S-426-D	March 1969.
Librium and Valium—illegal possession	S-451-D	July 1969.
Librium—illegal possession	S-452-D	Do.
Valium—illegal possession	S-399-D	November 1968.
Librium—illegal possession	S-287-D	January 1969.
Do	S-426-D	March 1969.
Valium—illegal possession	S-441-D	June 1969.
Librium—illegal possession	S-445-D	July 1969.
Librium and Valium—illegal possession	S-451-D	Do.
Librium—illegal possession	S-462-D	August 1969.

IV. Police officials in Rockford, Illinois, reported the following illegal activities involving Librium:

Sex, male; age, 30; circumstances: Librium—illegal possession. November 1968.

Sex, male; age, 22; circumstances: Librium—illegal possession. March 1969.

Sex, male; age, 22; circumstances: Librium—illegal possession. June 1968.

Sex, male; age, 18; circumstances: Librium—illegal possession. October 1968.

The Rockford Coroner's Office also reported that a 23-year-old woman committed suicide with Librium.

V. The Northern Illinois Crime Laboratory reported the following:

1. A 37-year-old man was involved in an automobile accident while driving under the influence of Librium.

2. A 39-year-old woman was involved in a three-car accident while driving under the influence of Valium.

I. The Hammond, Indiana Poison Control Center and the Hammond Police reported the following attempted suicides involving Librium and Valium:

Drug	1965	1966	1967	1968	1969
Librium	5	6	9	4	7
Librium plus other drugs					2
Valium		1	1	1	2
Valium plus other drugs					1
Total	5	7	10	5	12
Total, all drugs			39		

II. Police and public health officials in Luke County, Indiana reported the following:

Drug	Attempted suicide	Suicide	Deaths due to overdose
Librium alone	1		2
Librium plus other drugs		1	
Total	1	1	2

III. POLICE AND PUBLIC HEALTH OFFICIALS IN INDIANAPOLIS REPORTED THE FOLLOWING

Drug	Attempted suicide	Suicide
Librium alone	3	
Librium plus other drugs	2	1
Valium plus other drugs	2	
Total	7	1

REGION 8. LOUISIANA

Inquiries made of various police and public health officials in Orleans Parish, Louisiana with respect to incidents involving Librium during the year 1968, revealed the following:

Drug	Attempted suicide	Suicide	Illegal possession
Librium	12	1	1
Librium and Darvon	1		
Valium	1		
Total	14	1	1

REGION 8. TENNESSEE

Inquiries made of various police and public health officials in Davidson County, Tennessee with respect to incidents involving Librium and Valium, for the year 1968, revealed the following:

[Attempted suicides]

Drug:	
Librium	16
Valium	4
Total	20

REGION 9. WISCONSIN

A survey of public health and police officials in the greater Milwaukee metropolitan area revealed the following incidents indicative of abuse of Librium and Valium:

Drug	Adult accidental ingestion [1]	Deaths	Illegal possession
Librium	44	3	5
Librium plus other drugs	1		
Valium	19		
Valium plus other drugs	1		
Total	65	3	5

[1] Includes ingestion by persons over 12 years of age but less than 60. No figures were available as to which of these constituted attempted suicides. Figures do not include 50 cases of ingestion of Librium and 33 cases of ingestion of Valium which required hospitalization but for whom the age of the patient was not reported.

REGION 10. IOWA

I. The following information was obtained from various police officials in the State of Iowa relative to the abuse of Librium and Valium:

Sex, age and circumstances:

Sex, male; age ?; December, 1968: Defendant arrested for unlawful possession of dangerous drugs. Also found to be in illegal possession of Librium.

Sex, female; age 22; November 1968: Defendant arrested for unlawful possession of dangerous drugs. Also found to be in illegal possession of Librium.

Sex, male; age 21; November 1968: Defendant arrested for unlawful possession of dangerous drugs. Also found to be in illegal possession of Librium.

Sex, male; age 21; November 1968: Defendant arrested for unlawful possession of dangerous drugs. Also found to be in illegal possession of Librium.

Sex, female; age 32; July 1968: Defendant arrested for unlawful possession of dangerous drugs. Also found to be in illegal possession of Librium.

Sex, male; age 22; March 1968: Defendant arrested by Des Moines Police Department for unlawful possession of dangerous drugs. Also found to be in unlawful possession of Librium. Defendant was subsequently arrested by agents of the Bureau of Narcotics and Dangerous Drug for illegal sale of LSD.

Sex, male; age, 17; February 1968: Defendant arrested for unlawful possession of dangerous drugs. Also found to be in illegal possession of Librium and Valium.

II. The Iowa Poison Information Center and the Polk County Medical Examiner furnished the following information relative to th abuse of Librium and/or Valium.

1. A 45-year-old woman attempted suicide by ingesting 107 capsules of Valium—strength unknown.

2. A 50-year-old woman committed suicide with Valium.

3. A 44-year-old male died in jail following a drinking spree during which large quantities of Librium were ingested. The subject known to have obtained 100 Librium capsules on a falsified prescription the day before his death occurred.

REGION 10. MISSOURI

I. The St. Louis County Coroner's Office provided the following information relative to adult deaths in which Librium and/or Valium were involved:

Age	Sex	Date	Circumstances
55	F	June 1968	Valium and Carbrital—ruled suicide.
46	M	July 1968	Librium—open verdict but probable suicide—subject very despondent.
30	F	August 1968	Valium and whiskey—accidental fatal overdose.
39	M	July 1968	Librium and Boctin—open verdict—no witnesses.
40	F	January 1967	Librium, Placidyl, Sodium Butisol—suicide.
7	M	March 1967	Librium, Noludar, and whiskey.
36	F	March 1967	Librium, Darvon, and Preludin—suicide.
38	F	do	Librium, Doriden, Seconal, alcohol—suicide.
64	M	do	Librium, Tuinal, alcohol.
46	F	May 1967	Librium, Elavil—suicide.
58	M	September 1967	Librium, Tuinal, Amytal, Seconal—suicide.
77	F	do	Librium, Methyprylon—suicide.
64	M	October 1967	Librium—suicide.

II. Information obtained from various police and public health officials in Kansas City, Missouri, revealed the following incidents involving Librium and Valium:

Drug	Attempted suicide	Suicide
Librium	39	
Librium plus other drugs	19	1
Valium	6	1
Valium plus other drugs	4	
Total	68	2

REGION 11. OKLAHOMA

I. The following information was obtained from the Oklahoma City Police Department relative to abuse of Librium and Valium for 1967–1969.

Drug	Attempted suicide	Adult "accidental ingestion" [1]
Librium	6	14
Librium plus other drugs	1	
Valium	4	2
Valium plus other drugs	1	2
Total	12	18

[1] Includes ingestion by persons over 12 and less than 60 years old which were not officially designated as attempted suicides.

II. The Bureau of Narcotics and Dangerous Drugs received a communication from an adult male who claimed to be dependent on Librium. The habituation evolved out of P.R.N. prescription for the drug which was given to the patient by his physician many months previously. Although the patient indicated he was under the care of a physician in his attempt to break the habituation, he was experiencing considerable difficulty in doing so.

REGION 11. TEXAS

I. The following information relative to Librium and Valium was received from authorities at Parkland Hospital, Dallas, Texas, and police officials:

Drug	Attempted suicide	Adult accidental ingestions [1]	Illegal possession
Librium	3		
Librium plus other drugs	2	1	1
Valium	2		
Valium plus other drugs	2		1
Total	9	1	2

[1] Includes overdoses by persons over 12 and under 60 years of age which were not officially designated as attempted suicides, but which could possibly have been suicidal.

II. The Texas State Board of Pharmacy reported that it completed a violation hearing on 20 pharmacies during September 1969. Of these cases, 12 involved the refilling of prescriptions by pharmacists, and 5 involved the refilling of prescriptions by unlicensed persons, without authorization by the prescribing physician.

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III. Accountability audit investigations of pharmacies were conducted jointly by the Bureau of Narcotics and Dangerous Drugs and the Texas Board of Pharmacy. A summary of the findings of these audits follows:

Pharmacy	Period covered	Shortages [1] Librium	Shortages [1] Valium
Drive-in prescription shop	January to October 1969	17, 136	1, 266
Lorrine pharmacy	May to October 1969	4, 836	10, 023
Rexall super	January to October 1969	29, 166	1, 067
St. Anthony hotel	do		80
Ford-Painter	do	7, 091	434
Dorchester	do	9, 942	4, 660
Total		68, 171	17, 530
Total both drugs		85, 701	

[1] By number of capsules. Audit covered only Libruim 10 mg. and Valium 10 mg.

REGION 12. ARIZONA

I. The following information was obtained from the Arizona State Narcotics Enforcement Division and other Arizona law enforcement agencies:

Date of Arrest, November 1968; drug, valium; defendant charged with possession of marihuana and dangerous drugs.

Date of Arrest, March 1969; drug, librium; defendant, a practitioner of naturopathy, was charged with possession of dangerous drugs including Meprobamate and Librium. Though not licensed to practice medicine, he was allegedly dispensing various drugs to his "patients."

Date of Arrest, January 1969; drug, librium; defendant charged with sale of dangerous drugs—librium.

Date of Arrest, March 1969; drug, valium; defendant charged with possession of marihuana. He also had possession of valium and prescriptions for valium.

Date of Arrest, November 1968; drug, valium; defendant charged with possession of marihuana, valium and numerous other dangerous drugs. He received $150 fine on dangerous drugs charges. The marihuana charge is pending.

Date of Arrest, March 1969; drug valium; subject died as a result of a self-administered valium poisoning.

II. Records obtained from the Arizona Poison Control Center, University of Arizona, for the years 1967–1969, indicate numerous incidents involving librium and valium. A summary of the data found in those records follows:

Drug	Attempted suicides	Adult accidental ingestions [1]	Deaths
Librium alone	43	12	
Librium plus other drugs	47	2	1
Valium alone	30	7	
Valium plus other drugs	20	3	
Total	140	24	1

[1] Does not include persons under 12 years of age or over 60 or persons whose age was unknown. An ingestion is classified "accidental" unless a physician or competent public official has speicifically ruled that it was a suicidal attempt. Questionable cases classified as accidental.

REGION 12. COLORADO

I. Data on Colorado incidents involving Librium and Valium were obtained from several hospitals in Colorado including the Denver General Hospital, Saint Luke's, Colorado General, General Rose Memorial, Valley View, Saint Mary Corwin and Fitzsimons Army Hospital. A summary of the data, which covers the years 1967 through September 1969, follows:

Drug	Attempted suicides	Adult "accidental ingestions" [1]	Suicides	Drugs taken for "kicks"	Drug dependency
Librium alone	31	2			
Librium plus other drugs	70	9	2	1	2
Valium alone	21	6			
Valium plus other drugs	32	3			
Total	154	20	2	1	2

[1] Includes ingestion by children over 12 years of age and adults under 60 which, though not classified as suicide attempts by responsible medical or public authorities, indicate suicidal situations because of other drugs ingested simultaneously with the Librium and/or Valium or for other reasons.

II. Data obtained from the Denver and El Paso County Coroners revealed the following deaths:

Date of occurrence	Sex	Age	Drug involved
December 1966	F	61	Valium, Percodan, sodium amytal.
August 1967	F	25	Librium, barbiturates, and alcohol.
February 1967	F	44	Librium, Darvon.
March 1969	M	61	Librium, alcohol.

REGION 12. NEW MEXICO

A review was made of the records of the Albuquerque Police Department for the period July 1967, to the present for incidents involving Librium and Valium. A summary of the findings follows:

Drug	Attempted suicide	Adult [1] overdose
Librium [2]	23	4
Valium	1	
Total	24	4

[1] No determination as to whether overdose constituted attempt at suicide.
[2] In addition, there were 43 attempted suicides attributed to unnamed tranquilizers.

REGION 12. UTAH

On January 15, 1969, a 57-year-old woman died from a self-administered overdose of Librium and meprobamate. The decedent had a history of excessive use of meprobamate, aggravated depression and prior suicide attempts.

REGION 13. OREGON

The Oregon Poison Control Registry provided the following information relative to reported cases of poisoning involving Librium and Valium during the years 1967–1968. The figures include all age groups:

Drug	1967	1968	Total
Librium	23	24	47
Valium	19	40	59
Meprobamate	9	18	27

REGION 13. WASHINGTON

The following information concerning incidents which occurred during 1967–1968 relating to abuse of Librium and Valium was received from various police and public health officials:

Drug	Suicide	Illegal possession
Librium	2	8
Valium	2	1
Total	4	9

REGION 14. CALIFORNIA

I. Accountability audit investigations were conducted for 13 pharmacies by the California Board of Pharmacy. A summary of the findings of these audits follows:

Pharmacy	Period covered	Shortages [1]	
		Librium	Valium
Hidalgo drugs	January 1969 to October 1969		893
Million dollar	do	16,216	7,956
Commerce	do	455	7,564
West 11th	do		
Walker	do	200	75
Serv-[2] and Midwest Medical [2]	do	1,216	
Hillside	do	148	
Ames Drug	do		97
Carella	do		
Frank's	do	51	1,362
Millard	do		
Eddy-Taylor	do	2,514	696
Total		20,800	18,643
Total both drugs		39,443	

[1] By number of capsules or pills. Various dosage units for each drug are combined in totals. Not all dosage units or both drugs audited in every store.
[2] Composite audit.

REGION 14. CALIFORNIA

II. The following is a summary of information relative to the abuse of Librium and Valium during the period 1967–1969 as reported by the Poison Information Center, Los Angeles, and the Community Hospital of San Diego County.

Drug	Suicide	Attempted suicide	Adult "accidental ingestion" [1]
Librium		146	2
Librium plus other drugs		75	2
Valium		313	15
Valium plus other drugs	3	30	5
Total	3	564	24

[1] Includes overdoses by adults which were not classified as suicides.

III. The Orange County Coroner's Office reported the following deaths associated with Librium and Valium:

Date of death	Age	Sex	Drug
January 1968	56	M	Librium, Darvon, alcohol.
February 1969	39	M	Librium.
July 1969	72	M	Librium and Secobarbital.
March 1969	62	F	Valium and Meprobamate.

IV. The California Board of Pharmacy reported the following deaths associated with Librium and Valium:

Year	Drug	Number of deaths
1965–66	Librium and combination	17
	Valium and alcohol	2
	Valium	2
1966–67	Librium and combination	17
	Valium and alcohol	2
	Valium	1
	Valium and barbiturates	8
1967–68	Librium and combination	11
	Valium	4
	Valium and alcohol	2
	Valium and barbiturates	2
	Total	68

REGION 14. CALIFORNIA

IV. The following information concerning deaths associated with Librium and/or Valium during 1967–1969, was obtained from the San Francisco and Oakland County Coroner's Offices:

Age	Sex	Circumstances
41	M	Librium and alcohol—ruled accidental.
40	F	Valium, Thorazine, Librium, Darvon, and Seconal.
51	F	Barbiturates, Valium and alcohol.
57	F	Barbiturates and Librium—suicide.
50	M	Valium and Darvon—suicide.
27	F	Valium and alcohol.
57	M	Librium and Doriden.
46	M	Barbiturates, Valium, meprobamate—suicide.
26	M	Valium, alcohol—suicide.
Adult	F	Alcohol, barbiturates, Librium—ruled accidental.

V. The following information concerning incidents involving Librium and/or Valium for the years 1967–1969 was obtained from the San Francisco General Hospital and the San Francisco County Department of Public Health:

Drug	Attempted suicide	Suicide	Adult "accidental ingestion" [1]
Librium	8		27
Librium plus other drugs	6	1	7
Valium	2		13
Valium plus other drugs	2		
Total	18	1	47

[1] Includes adult overdoses which were not officially designated as suicidal.

Mr. DODD. Mr. President, apart from the overwhelming statistics which indicate the addictive propensities of librium and valium, there has recently come to light some very interesting information which almost by accident, and certainly unnoticed by the House of Representatives, slipped into the hearings which we held in August to investigate the use of narcotics by our soldiers stationed in Vietnam.

Dr. John K. Imahara, an Army psychiatrist who was stationed in Vietnam last year referred to librium and valium and said:

> These tranquilizers are dispensed by doctors . . . in an attempt to help people out, to cope with the situation. At times I felt that the soldiers abused them. At times I felt that the soldiers abused these, used it in such great quantities that they were incapacitated.

When asked to explain what he meant by the term "incapacitated" Dr. Imahara said:

> Incapacitated in the sense that they were not functioning.

When the Subcommittee on Juvenile Delinquency held its hearings last year, expert medical personnel and laymen told us of their experiences with valium and librium which every one of these people judged to be addictive.

Former drug addicts testified that they had used librium and valium either on their road to heroin, or as a stopgap when the more dangerous drug was not immediately available.

Doctors told us that they had discovered the addictive or habituating qualities almost by accident when their patients asked more and more for prescriptions for those two drugs.

There is, in short, not the slightest doubt in my mind, and in the minds of the majority of experts, that these drugs are highly dangerous; that they are addictive; and that the very least they are habituating.

Nevertheless, Hoffman-LaRoche at least for the moment, have reason to celebrate a singular triumph, the triumph of money over conscience. It is a triumph, however, which I hope will be short-lived.

In recent days, the newspapers have reported that the bill passed by the House is the pharmaceutical manufacturer's dream come true. No more accountability for librium and valium; and, because that proposition punctures the dike there are all sorts of possibilities of getting other addictive drugs off the schedule and off accountability in the foreseeable future.

My amendment, No. 1034, I believe, is almost as important as the legislation itself. It will express the spirit of the times; and the spirit of the times is not to put profits before all other considerations, but to consider the social consequences of any action before it is undertaken.

I urge the Senate to adopt this amendment.

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

Mr. DODD. I yield.

Mr. HRUSKA. The two drugs which are the subject of this amendment had been included in the bill approved by this body in January. Is that correct?

Mr. DODD. They were.

Mr. HRUSKA. And they were deleted in the bill passed by the other body?

Mr. DODD. That is correct.

Mr. HRUSKA. This Senator does not recall any explanation for that action. It would appear very appropriate, in my judgment, that we do restore them by means of this amendment and have a

discussion of it and decision upon it made in the conference.

Therefore, Mr. President, I am glad to support the Senator's amendment.

Mr. DODD. Mr. President, I do not wish to take long on this matter, but this is the right action to take.

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

Mr. DODD. I yield.

Mr. HART. Mr. President, I associate myself with the comments just made by the Senator from Nebraska. I do have a recollection of the sequence of events in our committee and subsequently and I hope that the Senate agrees to the amendment.

Mr. DODD. I thank the Senator for his support.

The PRESIDING OFFICER (Mr. CRANSTON). The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DODD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT—APPROVAL OF JOINT RESOLUTIONS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Geisler, one of his secretaries, and he announced that on October 6, 1970, the President had approved and signed the following joint resolutions:

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".

REPORT ON OCEAN DUMPING—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91-399)

The PRESIDING OFFICER (Mr. CRANSTON) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Commerce:

To the Congress of the United States:

The oceans, covering nearly three-quarters of the world's surface, are critical to maintaining our environment, for they contribute to the basic oxygen-carbon dioxide balance upon which human and animal life depends. Yet man does not treat the oceans well. He has assumed that their capacity to absorb wastes is infinite, and evidence is now accumulating on the damage that he has caused. Pollution is now visible even on the high seas—long believed beyond the reach of man's harmful influence. In recent months, worldwide concern has been expressed about the dangers of dumping toxic wastes in the oceans.

In view of the serious threat of ocean pollution, I am today transmitting to the Congress a study I requested from the Council on Environmental Quality. This study concludes that:

—the current level of ocean dumping is creating serious environmental damage in some areas.

—the volume of wastes dumped in the ocean is increasing rapidly.

—a vast new influx of wastes is likely to occur as municipalities and industries turn to the oceans as a convenient sink for their wastes.

—trends indicate that ocean disposal could become a major, nationwide environmental problem.

—unless we begin now to develop alternative methods of disposing of these wastes, institutional and economic obstacles will make it extremely difficult to control ocean dumping in the future.

—the nation must act now to prevent the problem from reaching unmanageable proportions.

The study recommends legislation to ban the unregulated dumping of all materials in the oceans and to prevent or rigorously limit the dumping of harmful materials. The recommended legislation would call for permits by the Administrator of the Environmental Protection Agency for the transportation and dumping of all materials in the oceans and in the Great Lakes.

I endorse the Council's recommendations and will submit specific legislative proposals to implement them to the next Congress. These recommendations will supplement legislation my Administration submitted to the Congress in November, 1969 to provide comprehensive management by the States of the land and waters of the coastal zone and in April 1970 to control dumping of dredge spoil in the Great Lakes.

The program proposed by the Council is based on the premise that we should take action before the problem of ocean dumping becomes acute. To date, most of our energies have been spent cleaning up mistakes of the past. We have failed to recognize problems and to take corrective action before they became serious. The resulting signs of environmental decay are all around us, and remedial actions heavily tax our resources and energies.

The legislation recommended would be one of the first new authorities for the Environmental Protection Agency. I believe it is fitting that in this recommended legislation, we will be acting—rather than reacting—to prevent pollution before it begins to destroy the waters that are so critical to all living things.

RICHARD NIXON.

THE WHITE HOUSE, *October 7, 1970.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. CRANSTON) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The Senate continued with the consideration of 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.

AMENDMENT NO. 979

Mr. ERVIN. Mr. President, I call up my amendment No. 979 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 95, line 6, strike out "(a)".

On page 95, beginning with line 12, strike out all through line 3 on page 96.

(The language sought to be stricken is as follows:)

(b) Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penality for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States magistrate issuing the warrant (1) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person, and (2) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Mr. ERVIN. Mr. President, I ask unanimous consent that the names of the distinguished Senator from Virginia (Mr. BYRD), the distinguished Senator from Michigan (Mr. HART), and the distinguished Senator from Maryland (Mr. MATHIAS) be added as cosponsors of this amendment.

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

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask for the yeas and nays on the amendment of the Senator from North Carolina.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is it the intention of the Senator from North Carolina to ask that the amendments be considered en bloc?

Mr. ERVIN. Mr. President, it is my purpose to call up only one of the amendments. This is amendment No. 979. I have two other amendments, but I am not going to call them up.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, might it be possible to get a time limitation agreement on this amend-

ment? If so, what would the Senator suggest?

Mr. ERVIN. Mr. President, I do not think I will take an hour, but I would like to have an hour, so that if anyone else wishes to say something in behalf of the amendment he could do so.

Mr. BYRD of West Virginia. Will the Senator yield further?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. I wish to inquire of the Senator from Nebraska (Mr. HRUSKA) if he would be agreeable to a time limitation on this amendment of 1 hour to a side?

Mr. HRUSKA. It is all right with me if it is satisfactory with the Senator from Connecticut.

Mr. DODD. I have no objection.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on the amendment of the able Senator from North Carolina (Mr. ERVIN) be limited to 2 hours, the time to be equally divided and controlled between the mover of the amendment (Mr. ERVIN) and the manager of the bill (Mr. DODD).

The PRESIDING OFFICER. Is there objection?

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

Mr. BYRD of West Virginia. I yield.

Mr. HOLLAND. Mr. President, I shall not object but I wonder, in view of the fact that that would take us until 7:30, if it would be appropriate to place the vote on this matter at, say, 10:30 in the morning when we resume.

Mr. BYRD of West Virginia. Mr. President, if the Senator from North Carolina will yield, it is the hope of the leadership—and I speak with the authority of the majority leader, having heard him express his hope—that we would go until 7:30 or 8 o'clock tonight; it is this hope that we finish action on the bill tonight. It is possible the Senator from North Carolina may yield back part of his time. He indicated he might not take 1 hour. The leadership expresses the hope that we complete action on the amendment and the bill and then lay down the crime bill tonight.

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

Mr. ERVIN. This is not on my time, I hope.

Mr. HRUSKA. No. No agreement has been reached yet.

Mr. HOLLAND. Since we are going so late in the evening and some of us have matters which have been set a long time ago, and I am one, it might be appropriate to vote at 10:30 in the morning.

Mr. DODD. I am wondering about other amendments.

Mr. BYRD of West Virginia. I know of only one other amendment to be offered, and that is to be offered by the Senator from Missouri (Mr. EAGLETON). He indicated he would not require much time on the amendment. Therefore, I think if we can reach an agreement on the amendment of the Senator from North Carolina, there is a fair likelihood we could complete action on the bill this evening.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request for a 2-hour time limitation on the amendment of the Senator from North Carolina? The Chair hears no objection, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I thank the Senator.

The PRESIDING OFFICER. The Chair wishes to address a question to the Senator from North Carolina. In view of the fact the Senator's amendment relates to two separate sections on one page, is it the Senator's desire to request that the amendments be considered en bloc.

Mr. ERVIN. Yes. All I am doing in section (a) is to strike out the (a); all I am trying to do is strike out the provisions of subsection (b). I ask that the amendments be considered as one amendment.

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

How much time does the Senator yield to himself?

Mr. ERVIN. Mr. President, I yield myself as much time as I may use.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, the men who drafted the Bill of Rights loved liberty and loathed tyranny; and they recognized that one of the most unjustified tyrannies which could be practiced by government upon its citizens consisted of unwarranted intrusions into the homes of citizens.

Mr. President, today I call upon the Senate to protect one of the most basic rights of all American citizens—the right to enjoy privacy in their own homes. Many poets have spoken on the home as a privileged sanctuary, but no one has said it more eloquently than Mississippi's great novelist, William Faulkner. He called the home that "last vestige of privacy without which man cannot be an individual." The right of American citizens to be free from unreasonable government intrusion in their homes is the issue before us today.

In their efforts to facilitate law enforcement, the drafters of the Comprehensive Drug Abuse Prevention Control Act of 1970 have included a section 509B, which would allow law enforcement officers, showing little more than the easy destructibility of certain evidence, to break into a man's home without advising the homeowner that he is there and without ever telling the homeowner that he is an officer of the law and without ever telling the homeowner that he has a search warrant. My amendment would strike section 509B from the proposed act.

The provision reads as follows:

> Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States magistrate issuing the warrant (1) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person, and (2) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Mr. President, I believe that it is wrong to allow our policemen to catch criminals by acting like criminals; it is wrong to allow our policemen to enter the dwelling houses of American citizens in exactly the same manner in which burglars now enter—either by stealth or by force and without notice.

Today the Senate is dealing with a rule, basic to our common law and our constitutional heritage, which holds that law officials must announce themselves before entering a home. Actually, the rule was pronounced in 1603 in Semayne's case where the court said:

> In all cases where the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the King's process, if otherwise he can not enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors. . . .

Thus, the rule of announcement is well established in English common law and was widely recognized in England and in the United States when the fourth amendment was drafted, submitted, and ratified. The remarks of William Pitt in 1763 are just an example of the eloquent expressions of our deep historical commitment to the general principles of protection which a man's home affords him from the forces of governmental authority:

> The poorest man may in his cottage bid defiance to all of the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement.

Because of the numerous remarks by the proponents of section 509(b) that it is necessary to control drug traffic, I am reminded of another statement by William Pitt in which he said:

> Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.

I deny that there is any necessity for altering a doctrine that every man's home is his castle which goes back even before Semayne's case in 1603.

Early in our history, Congress codified the rule in a statute, section 3109 of title 18, which we still have with us, and most States have the rule, either by common law or statute.

With all due respect to everyone concerned, I would say that it is astounding to have the Congress, in a country which is supposed to be a free society, advocate, in the year of our Lord 1970, that a rule which had reached full fruition in England as early as 1603 ought to be nullified, and that a man's home should no longer be regarded his castle.

Because the announcement rule had been embodied in a Federal statute, the courts rarely had the occasion to consider the constitutional implications of the rule, but there is no doubt that the recent case of Ker against California can only be read as establishing the rule

as a constitutional requirement of the fourth amendment. Mr. Justice Brennan's views for four Justices clearly states it. Mr. Justice Clark's opinion for four Justices make no sense unless it is viewed as proceeding from constitutional premises because the Supreme Court has no authority to review State criminal proceedings except upon constitutional grounds. In that case, Justice Clark minutely reviews the facts to find that the officers' actions in entering without notice in Ker qualified under one of the traditional exceptions to the announcement rule, a pointless procedure if the actions were to be governed by California's statute rather than the fourth amendment.

Thus, we are considering a constitutional rule and we cannot expand upon the common law exceptions which the rule embodies. These common law exceptions have been summarized by Justice Brennan as:

(1) Where the persons within already know of the officers' authority and purpose, or (2) where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within made aware of the presence of someone outside (because for example, there has been a knock at the door) are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted.

It is to be noted that in every one of the exceptions to the rule that an officer executing a search warrant must announce his presence, his purpose, and his authority, rests upon the facts existing at the time the officer undertakes to execute the search warrant, and not upon some facts or surmises or suspicions or prophesies which the officer may state to the judge or the magistrate at the time he applies for the search warrant.

It will be argued that 509B does little more than codify these common law exceptions to the announcement rule. However, there is absolutely no foundation for any belief that the common law ever contained an exception based solely upon the nature of the evidence sought, as would be allowed under 509B. Thus, exceptions, particularly that based on the likelihood of the destruction of evidence, are based almost entirely on the actual knowledge of the suspect that the police were about to enter his dwelling at that time. Under 509B, the suspect could not know this because, in fact, the officer would be miles away securing the "no knock" warrant. Thus, the only way an officer would be able to get a search warrant in almost every case would be to swear to facts which were false at the time they were sworn to; that is, that the occupant of the house would destroy the evidence, the narcotics or the marihuana, if the officer did not break into the house without notice to them.

It is an absurdity to maintain that an officer who goes before a judge or a U.S. commissioner for a search warrant at a place which may be miles and miles from the house to be searched can have any knowledge that the people are going to destroy the narcotics which they obtained for their own use or for peddling to others, when they do not even know the officer is coming and have no knowledge of the issuance of the warrant. Because the police cannot have the advance knowledge that the emergencies mentioned in 509B exist, the section will be unconstitutional in virtually every instance in which it is used.

I wish to direct the attention of the Senate at this point to the fourth amendment, which incorporates in the Bill of Rights the doctrine that every man's home is his castle. That amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

I would emphasize, above all things, that the amendment says that "no warrants shall issue, but upon probable cause."

Probable cause necessarily relates to facts existing at the time the search warrant is applied for. It cannot be supplied by suspicion as to future actions. It cannot be supplied by false prophecies as to the future. And this no-knock provision, which my amendment seeks to strike, is based entirely, not upon facts known to the applying officer at the time he seeks to obtain the search warrant, but upon facts which the officer prophesies or predicts are going to exist in the future, at the time he undertakes to execute the search warrant, at a place which may be many miles away, hours and hours later.

I do not know of any officer of the law who is gifted with such powers of prophecy, but even if there were such a being, his prophesying would not satisfy the requirement of the fourth amendment that there must be probable cause for the issuance of the warrant.

I wish to call the attention of the Senate to what one of the most recent commentaries upon the Constitution of the United States has to say on this point. I refer to Bernard Schwartz's "Rights of the Person," volume I, pages 184 and 185.

Mr. Schwartz says this:

Basic to the protection of the right of privacy guaranteed by the Fourth Amendment is its requirement that no search warrants "shall issue but upon probable cause supported by oath or affirmation." The requirement of probable cause, in connection with the securing of a search warrant, is largely the same as the probable cause which must exist before an arrest may be made without a warrant. Consequently, much of the discussion in section 360 is also pertinent to the present discussion. Here, too, the fundamental rule is that mere suspicion is not enough to constitute probable cause; hence a warrant for the search of a dwelling, issued only on affirmation of "cause to suspect and . . . believe" that contraband liquor was in such dwelling, and without any statement of supporting facts, was ruled invalid: "Mere affirmance of belief or suspicion is not enough."

This statement of the writer is based squarely upon the decision of the Supreme Court of the United States in the case of *Nathanson* v. *United States*, (290 U.S. 41).

I submit that a prophecy as to what is going to happen in the future, when an officer undertakes to execute a search warrant, is merely a suspicion as to what is to happen in the future. In other words, it is equivalent to the application for the warrant in the Nathanson case which alleged that the officer had cause to "suspect and believe." That is as far as an officer can go when he applies for one of these no-knock search warrants which are to be issued on the basis of what he predicts will happen in the future.

I do not see, in the first place, how the Supreme Court could possibly sustain a search warrant based upon an oath or affirmation stating what is going to happen in the future, that is, at the time the officer undertakes to execute the search warrant. Even if the Court could find some way to stretch the words of the Constitution with respect to the necessary probable cause to such lengths as that, it would necessarily follow that in virtually every case where a motion is made to suppress evidence upon a no-knock warrant of this character, the Court will have to say that the officer had nothing more than a mere suspicion, nothing more than a mere belief, nothing more than a mere prophecy, that he had no probable cause, and the evidence would be excluded under the rule which governs the enforcement of the fourth amendment.

In the previous Senate debate and in the press it was contended that 29 States—at least—have authorized no-knock intrusions and that these have not been voided. Using the data of the Justice Department's own attorneys, CONGRESSIONAL RECORD, January 24, 1970, pages 1001–1008, it can be shown that the figure is erroneous. Five States have enacted statutes which authorize the inclusion of no-knock provisions in warrants. One State's high court has recently approved the practice by decision.

In all the other States there is either a notice requirement by statute or the common law applies. In either case, presumably, the common law exceptions apply—that is, the exceptions formulated by Justice Brennan in the Ker case. In many of the States there are no decisions by the courts; in 23, there are. Proponents have thus added these 23 to the six mentioned above and come out with 29. Although there may be some confusion in some of the decisions, the general statement is true that practically all the 23 adhere to the common law rule which the House bill will change.

Another argument which the proponents of the House-passed drug bill have skillfully employed is the additional requirement that the evidence "will be easily and quickly destroyed or disposed of." I submit that whether one uses "may" or "will" in terms of the evidence being destroyed makes little difference. "Will" no doubt requires that an officer present just a little more to the magistrate to make a showing than "may" does, but the important point is that what has to be established to the magistrate's satisfaction in each case is not that the evidence "may" or that the evidence "will" be destroyed but "probable cause" that the evidence "may" or "will" be destroyed. In other words, the supposed stricter requirement of "will" is

illusory, because in any event all the officer has to show is that the evidence probably "may" or "will" be destroyed. At that point in time all he can show to the magistrate is that the evidence is of such nature that it could easily be destroyed. No matter what embellishments he comes up with, no matter what detail he piles on, at the time of the issuance of the warrant all he can know is the nature of the evidence sought. The supposed protection accorded the privacy of our citizens by having a magistrate pass on the no-knock request evaporates upon examination.

The policy underlying the rule of announcement is made up of several strands. One purpose is to protect the officers, both from innocent house holders and from criminals. Under the decisions of every State of the Union and in England, a householder has the right to kill an officer of the law who attempts to enter without announcing and his killing under the law would be justifiable homicide. The announcement rule protects the police from criminals because the average narcotics violator, though he might be inclined to shoot unidentified intruders, is highly unlikely to shoot it out with police officers. Criminals who do present a real hazard to officers can be taken care of under a well established exception to the rule which we need not codify.

As a matter of fact, I know of no provision of law which puts officers of the law in more jeopardy of life and limb than a provision of the law which undertakes to authorize no-knock searches of the homes of our citizens. When someone attempts to break into the dwelling house of the average citizen in the night time, the average citizen is not going to wait to ascertain whether it is an officer of the law or whether it is a burglar. He is going to resist to the utmost, even to the taking of life, the unwarranted intrusion into his house by some man who attempts to enter without notice, without identifying himself, without revealing his status as an officer of the law, and who attempts to enter by force, in like manner as forcible burglars.

It is ridiculous to say that an officer under those circumstances is likely to protect his life by breaking without notice. The truth is the opposite. He is more likely to lose his life if he attempts to break without notice.

Beyond the practical considerations, the announcement rule was founded to protect the right of privacy to which a man in his home is entitled. Also, the fourth amendment's protections against unreasonable searches and seizures were drafted while still burning fresh in people's minds were the abuses of British power by the infamous writs of assistance and the dreaded general search warrants. There is no reason to turn back the clock at this point to allow unannounced forcible entries by the police authorized by a blanket rule based on the type of crime or evidence involved. There is no doubt that with this type of authority, law enforcement officers will be tempted to greatly abuse this section by pretending that they are searching for narcotics in all cases for the purpose of securing this type of warrant.

Proponents of section 509(b) argue that because of the demand of effective criminal investigation and law enforcement, this legislation is necessary.

Of course, it is never popular to cast a vote that can be misinterpreted as favoring criminals, as hampering law enforcement. Yet, it makes no sense to state that we protect criminals by this rule. The Bill of Rights applies to everyone, even drug peddlers. If our standard is going to be that if a constitutional guarantee serves to protect criminals, we are going to be free to disregard it, then we are in trouble. On that theory, society would have to disregard every basic right given to any person in our society. As Mr. Justice Sutherland said:

> If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned.

Mr. Justice Jackson even more eloquently dealt with this argument of legislative necessity. He said:

> We meet in this case, as in many, the appeal to necessity. It is said that if such arrests and searches cannot be made, law enforcement will be more difficult and uncertain. But the forefathers, after consulting the lessons of history, designed our constitution to place obstacles in the way of a too permeating police surveillance, which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment.

Actually, because the present common law exceptions to the announcement principle allow Federal and State officers to disregard it in exigent circumstances involving danger, destruction of evidence, or escape of suspects, I do not believe a failure to enact such provision at all will have a deleterious effect on law enforcement. Also, there is the possibility that section 509(b) will impede law enforcement because it will give every person entitled under the law to this protection against such search an opportunity to raise the question as to whether any information or evidence which was obtained was obtained in violation of the fourth amendment.

In many cases, Congress does not have the benefit of sound advice regarding its legislating in a certain field. But in the area of prior notice before entering, Mr. Justice Brennan, writing for the court in the Miller case, lays down very sound and plain policy considerations to guide us. He said:

> The requirement of prior notice of authority and purpose before forcing entry into a home is deeply rooted in our heritage and should not be given grudging application.

I hope the Senate will take Justice Brennan's advice and vote to strike section 509(b) from the Comprehensive Drug Abuse Prevention Control Act of 1970.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, first let me say, as I am sure all Members of the Senate will say, that we are always attentive to the observations of the great Senator from North Carolina. It is not an ordinary senatorial courtesy to say that. He is a great lawyer and was a great judge, and he is a great Senator. I do not ignore or treat lightly his views on anything. I am privileged to sit beside him on the Judiciary Committee, and have had 12 years of opportunity to observe his erudition, his scholarship, his justice, and his decency. So when I rise in opposition, it is with some feeling of apology. But I suppose this is what makes contests in our country, and it is good for us that it does.

Really, this is the same argument we had in January. I do not believe there is anything new that the Senator has introduced by way of argument.

He argued then, that he felt that this was an infringement upon the important fundamental constitutional rights of the American people. I understand his concern. I, too, am worried about it. I am more on his side, perhaps, than it would appear. But we are faced with a very difficult situation, and we need new tools with which to meet that situation.

This no-knock provision, as someone called it, it is not a provision in the sense that that term connotes violence, lack of notice, invasion, or instrusion. It is a no-knock provision only by the definition of its terms, the right of law-enforcement officers to get into places where dope peddlers store their filthy goods with the capability of destroying them before law-enforcement officers can get in and take possession of them. That is what this is all about.

It is easy for dope peddlers and pushers to take a vial of pills worth $100,000 and flush it down the toilet or down the kitchen sink.

What are we going to do about it?

Are we paralyzed? Are we so enchanted by our constitutional privileges that we are no longer able to defend ourselves?

Mobs take advantage of every right and every privilege. I do not ask that we adopt their style, but I do say, let us meet them in a decent, orderly, and constitutional way.

I say to my good friend from North Carolina, who is a distinguished lawyer, that the so-called no-knock provision—I should not call it that, because it is not what the term implies. It should be called something different. This provision in the bill is a guarded and careful provision of law. It is not a triviality, I am sure the Senator from North Carolina will agree, to have a law enforcement officer required to go before a Federal judge, as he has to do, for a search warrant, and prove that the requirements under this section are greater than those for a search warrant. The law enforcement officer has to be specific and say, "Your honor, at 21 Smith Street there is a house, where on the second floor there is a front room on the right, and in that room there is a bureau. In the right front drawer of that bureau there is a vial. We know what we are talking about, and we want the right to go in there and seize that vial because the people in that house are drug peddlers, making addicts of our young people and perpetuating the crime of drug addiction. Unless we can get in quickly, they will be able to throw the vial away, or destroy it, so that we will not be able to confiscate the evidence and later be able to convict them."

What is so outrageous about that? I

have great confidence in our Federal judges. I do not believe for one minute that they will treat this matter lightly. I am sure that they will require, as they have with search-and-seizure requirements, careful application of the rule. We will have to show the Federal judge that there are these circumstances which are necessary for his approval of the kind of application that is before him.

What better protection do we have than our judges to control this kind of situation?

I believe that the Senator's argument on the grounds of constitutionality is scholarly. There is no question about it. I wish we did not need this provision. I wish we could go back to the early days when those great and wonderful men wrote the Constitution and the Bill of Rights for our country. However, that was a different society. If they were living today, I am sure that they would say that is right and that is what we should do.

Mr. President, the argument I made here last January is the same argument I make tonight. Nothing is changed. Everything is the same. I do not know how we can win the fight against the hoodlum and the drug peddler unless we have this new, carefully guarded, and carefully controlled, legal weapon in our jurisprudence. I regret that I must differ with the Senator from North Carolina. I wish it would not be so. But what brings on these problems is the misuse of constitutional liberty. It was never intended by our Founding Fathers that our liberties would be used against the free people of this country. They were not that small or narrow. These problems did not exist then. They could not foresee the vast jungle of organized crime today, not only in this country but stretching across the world.

I say to my good friend from North Carolina, be not too upset. We are not trying to write anything into the law of the country that will tear apart our constitutional liberties. We are trying to keep up to date with contemporary conditions.

If hoodlums can hide safely behind the safeguards of our liberties and prepare and dirtribute narcotics that cause addiction beyond my ability to enumerate, then a free people becomes paralyzed and cannot cope with the situation.

I wish the Senator would withdraw his amendment. I ask that in all earnestness because he is a great constitutional lawyer.

Mr. President, my own State of Connecticut has had the so-called no-knock law since 1834. We are known as the constitutional State. We have never had a case where our police, under the laws of Connecticut over that long period of time were involved in any question concerning it. Not once.

There are over 30 States which have the same provision. Since we debated this matter last January, I have received reports from several States which have adopted the provision. They tell me they are doing very well with it and do not have any constitutional problems.

New York State is one. There are also Alaska, Arizona, California, Connecticut, Delaware, Floride, Louisiana, Maine, Missouri, Montana, Nebraska, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, and West Virginia.

All these jurisdictions permit what is before us tonight.

As I have just stated, no one has ever complained about the provision in Connecticut. Our police have not abused their power and neither have the courts. I do not believe that any Federal judge in this country will abuse it, either.

Mr. President, I do not want to belabor this question any further.

Does the Senator from North Carolina insist on a rollcall vote?

Mr. ERVIN. Yes, sir.

Mr. DODD. Well, Mr. President, I may have something to say later, but I believe now that the Senator from Nebraska (Mr. HRUSKA) wishes to speak.

Mr. HRUSKA. Mr. President, will the distinguished Senator from Connecticut yield me 5 minutes?

Mr. DODD. I am happy to yield to the Senator from Nebraska all the time he wants.

Mr. HRUSKA. Mr. President, section 509 of the bill authorizes unannounced entries under defined circumstances in the execution of search warrants relating to felony offenses involving controlled substances. Considering and passing on two other bills, the Controlled Dangerous Substances Act and the omnibus District of Columbia crime bill—both of which contained no-knock provisions, the Senate has had before it amendments similar to the one the Senator from North Carolina has introduced. On both occasions these amendments were defeated. The position of the Senate has been confirmed.

By now the line of demarcation between the proponents and antagonists of this amendment has been well delineated and floor debate will probably serve little or no purpose from the standpoint of convincing one side or the other. The Department of Justice has repeatedly stated, before both committees of the Senate and the House that it can find no constitutional defect in the no-knock provision and that adequate safeguards have been incorporated to insure that it will not be abused or used indiscriminately. The Department has further stated that this provision is not designed for use in the routine type of drug investigation. Rather, it is intended to be used to apprehend and successfully prosecute the highly organized and sophisticated professional drug trafficker who is either willing and capable of destroying evidence quickly, or predisposed toward taking the life of a Federal agent.

The restrictions and limitations on obtaining a no-knock authorization are many. First, no-knock authority is only permitted in the execution of search warrants relating to offenses involving controlled substances, the penalty for which is imprisonment for more than 1 year. Second this authority extends only to Federal agents authorized to conduct investigations relating to controlled substances. Third, as well as showing sufficient facts to justify the issuance of a conventional search warrant, the officers must demonstrate sufficient facts to justify a judge or magistrate finding that there is probable cause to believe that if the officers knocked and announced their authority and purpose, either the evidence sought would be quickly and easily destroyed or disposed of, or the officers placed in danger of physical harm. In addition, the warrant must contain a statement on its face that an unannounced entry is authorized, and the officers executing the warrant must identify themselves as soon as it is practicable after gaining entry.

In reality, this section does little more than codify the common law exceptions to the general rule requiring officers executing search warrants to knock and announce their authority and purpose. Furthermore, the limitations incorporated into the section strike a balance between the need to protect individual privacy and the need to provide law enforcement with effective tools which will allow them to meet the demands imposed on them.

The following are a list of States that permit peace officers to enter dwellings without announcing their authority and purpose to either protect themselves or to prevent evidence from being quickly disposed of or destroyed. This no-knock authority is permitted either by statute or by case law.

Mr. President, I ask unanimous consent that there be printed at this point in the RECORD a list of States that permit no-knock authority.

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

STATE LAWS PERMITTING NO-KNOCK AUTHORITY

1. Alaska.
2. Arizona.
3. California.
4. Connecticut.
5. Delaware.
6. District of Columbia.
7. Florida.
8. Georgia (only for arrest warrants).
9. Hawaii (no-knock permitted if door is open).
10. Illinois.
11. Indiana.
12. Louisiana.
13. Maine.
14. Maryland.
15. Massachusetts.
16. Missouri.
17. Montana.
18. Nebraska.
19. New Jersey.
20. New York.
21. North Dakota.
22. Ohio.
23. Oregon.
24. Pennsylvania.
25. Rhode Island.
26. South Carolina.
27. South Dakota.
28. Texas.
29. Utah.
30. Vermont.
31. Washington.
32. West Virginia (no-knock permitted for structures other than for "dwellings").

Mr. HRUSKA. Mr. President, it is my hope that the amendment will be rejected in line with similar action taken on previous occasions when the same type of amendment was considered by the Senate.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, first I wish to thank my good friend, the distinguished Senator from Connecticut for his very gracious personal remarks concerning me. Also, I would like to pay tribute to him and to the Senator from Nebraska for their work in bringing the narcotics bill to its present stage.

The distinguished Senator from Connecticut has worked on this matter for years and years. The American people owe him a deep debt of gratitude for his diligence and his untiring and intelligent efforts in this direction.

However, I deeply regret the fact that the Senator does not place as much value on the fourth amendment as the fourth amendment deserves.

I point out again that the Constitution says that no warrant shall issue but upon probable cause, supported by oath or affirmation.

This requirement of the fourth amendment that no warrant shall issue but upon probable cause supported by oath or affirmation requires knowledge of facts. We cannot issue a search warrant on suspicion. We cannot issue a search warrant on prophecy. We have got to issue a search warrant on the basis of what the officer knows and what he swears to in respect to existing facts at the time he applies for the warrant.

Now, I want to take issue with my good friends about what the laws of the States are. The laws of the States are just like the law enunciated by Justice Brennan in the Ker case.

The laws of the States say that there are certain exceptions to the absolute rule which ordinarily governs; namely, that no officer, even if armed with a search warrant, can break into a man's house without first knocking, without first informing the occupant of the house of his presence, and not only of his presence, but of his purpose; and not only of his purpose, but of his authority under the search warrant.

Every one of these State rules that have been alluded to are not rules which justify the kind of no-knock warrant that is authorized by section 509(b). They are rules which justify a failure to knock, a failure to announce the presence and the purpose of the officer based upon facts which exist at the precise moment that he undertakes to enter the house, at the precise moment he undertakes to execute the search warrant.

They are stated by Mr. Justice Brennan in *Ker* v. *State of California*, 374 U.S. 23.

I particularly call the attention of the Senate to page 47 of that opinion. It says: "Even if probable cause exists."

Mind you, even if there is probable cause, an officer has no right to enter a house either to make an arrest or to execute a search warrant without knocking, without apprising the occupants of the house of his presence and purpose except under certain conditions which have to exist, not at the time he applies for a search warrant somewhere else and at some other time, but conditions which must exist at the precise moment when he attempts to execute the search warrant or to enter the house.

At this time, I shall explain the common law exceptions to the announcement rule as outlined by Justice Brennan in the Ker case. These are the only exceptions that the States recognize.

Justice Brennan in the Ker case states that even if probable cause exists for the arrest of the person within, the fourth amendment is violated by an unannounced police intrusion into a private home with or without an arrest warrant, except, first, where the persons within already know of the officers' authority and purpose. Manifestly that is a condition which can only exist and must exist under the exception at the precise moment that the officer undertakes to execute the warrant or make the arrest; not at some prior time when he applies to a judge or magistrate for a search warrant.

The second exception is where the officers are justified in the belief that persons within are in imminent peril of bodily harm. Manifestly an officer cannot know that except when he is there on the premises, outside the house, for the purpose of making the arrest or executing the search warrant.

The third exception, Mr. Justice Brennan says, is where those within, made aware of the presence of someone outside because, for example, there has been a knock at the door, are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted.

It does not say "will be attempted at some time in the future" but is being attempted then and there at the time the officer is present at the house. It has to be attempted at that very moment. That is the kind of probable cause that must exist, and the facts establishing that probable cause can only exist at the precise time that the officer is on the premises for the purpose of making the arrest or executing the search warrant. That is the probable cause that has to exist. It is not something you can foretell about. It is not something you can expect. It is not something you can imagine will occur in the future. It is not something you can prophesy about.

This no-knock provision is inconsistent with the laws of the States because they require the existence of these emergency conditions at the precise moment the officer undertakes to make an arrest or execute a search warrant.

The trouble with the no-knock provision is that it attempts to substitute for probable cause based on existing facts at the time the warrant is applied for, something that is going to happen in the future.

This no-knock provision is absolutely inconsistent with the law as stated in this case by the four judges in the majority or the four judges in the minority.

This no-knock provision that is embodied in the bill is an attempt to have Congress repeal by statute the fourth amendment, and that cannot be done. It may be that these great basic rights that are created by our law for the protection of the privacy of citizens, and for the other protections of citizens, such as the presumption of innocence, may be handicaps in the enforcement of the law, but we should not get to the point where we would do as they did in the Star Chamber. We should not abolish the presumption of innocence or the requirement that no man is required to incriminate himself and make him testify against himself as was done in the Star Chamber. We should not destroy the idea that a man's home is his castle. All of these things are impediments to the conviction of parties. But they are designed to protect all men, regardless of whether they are good men and regardless of whether they are bad men. Mr. President, when you stop giving basic constitutional protection to bad men it is just a short time until they are denied to good men.

The only way to enforce a constitutional protection, such as the fourth amendment, is to give that protection to all our citizens, regardless of whether they are good or bad, wise or foolish, powerful or weak, rich or poor.

I say the Senate should strike out of this bill an iniquitous provision and make the bill harmonize with all the wise provisions in the bill. Let me not destroy a good bill by polluting it with a section which manifestly has contempt for the fourth amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD the opinion in the case of Ker against State of California.

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

*[374 US 23]

*GEORGE D. KER ET AL., PETITIONERS,

v.

STATE OF CALIFORNIA

374 US 23, 10 L ed 2d 726, 83 S Ct 1623

[No. 53]

Argued December 11, 1962. Decided June 10, 1963.

SUMMARY

On the day following a California police officer's encounter with a known marijuana dealer, including the purchase from the dealer of a package of marijuana, other police officers observed an encounter between the dealer and the defendant husband, which occurred under identical surrounding circumstances except that the officers did not see any substance passing between the two men. The officers following the defendant lost contact with him when he made a U-turn in the middle of a block. Without securing a search warrant, the officers, among them one having information that the defendant husband was selling from his apartment marijuana possibly secured from the dealer, obtained from the building manager a passkey to defendants' apartment, and entered the apartment, where they found the defendant husband in the living room. The defendant wife emerged from the kitchen, and one of the officers, after identifying himself, observed through the open doorway of the kitchen a package of marijuana on a scale atop the kitchen sink. The officers then arrested both defendants and searched the apartment, finding additional marijuana in the kitchen cupboard and atop the bedroom dresser.

The defendants were convicted in the Superior Court of Los Angeles County of possessing marijuana. Their convictions were affirmed by the California District Court of Appeal on the grounds that there was probable cause for the arrests, that the officers' entry into the apartment was for the purpose of arrest and was not unlawful, and

that the search, being incident to the arrests, was likewise lawful and its fruits admissible in evidence against the defendants. (195 Cal App 2d 246, 15 Cal Rptr 767.)

On certiorari, the United States Supreme Court affirmed. The ultimate issue before the Court concerned the admissibility, in defendants' trial, of the marijuana seized in their apartment. Eight members of the Court agreed on the nature of the standards applicable to determine the reasonableness of a state search and seizure, but split 4 to 4 as to whether these standards were violated under the circumstances of the present case. The remaining member—Mr. Justice HARLAN—concurred in the affirmance of the judgment below.

In an opinion by CLARK, J., expressing the views of eight members of the Court, it was held that the question of reasonableness of a state search and seizure is governed by federal constitutional standards, as expressed in the Fourth Amendment and the decisions of the Court applying that amendment. On the other hand, HARLAN, J., expressed the view that state searches and seizures shoud be judged by the more flexible concept of "fundamental" fairness, or rights "basic to a free society," embraced in the due process clause of the Fourteenth Amendment.

The question whether federal constitutional standards of reasonableness were violated by the search in the present case was answered in the negative in an opinion by CLARK, J., joined by BLACK, STEWART, and WHITE, JJ. These justices held that the search without warrant was valid as incident to a lawful arrest, made upon probable cause, and that the officers' method of entry was not unreasonable. On the other hand, BRENNAN, J., joined by WARREN, Ch. J., and DOUGLAS and GOLDBERG, JJ., expressed the view that federal constitutional standards were violated because the unannounced intrusion of the arresting officers into defendants' apartment violated the Fourth Amendment.

ANNOTATION REFERENCES

1. As to the rules governing, prior to the Mapp Case, the admissibility of evidence obtained by illegal search, see 24 ALR 1408, 32 ALR 408, 41 ALR 1145, 52 ALR 477, 88 ALR 348, 134 ALR 819, 150 ALR 566, 50 ALR2d 531. See also 93 L ed 1797, 96 L ed 145, 98 L ed 581, 100 L ed 239, 6 L ed 2d 1544 (dealing with United States Supreme Court cases in point). For the law developed on the same subject in and after the Mapp Case, see 84 ALR2d 959.

2. Federal constitution as a limitation upon the powers of the states in respect of search and seizure. 19 ALR 644.

3. Right of search and seizure incident to lawful arrest without a search warrant, 32 ALR 680, 51 ALR 424, 74 ALR 1387, 82 ALR 782. See 4 L ed 2d 1982 (collecting Supreme Court cases in point).

4. What constitutes "probable cause" or "reasonable grounds" justifying arrest of narcotics suspect without warrant. 3 L ed 2d 1786.

HEADNOTES—CLASSIFIED TO U.S. SUPREME COURT DIGEST, ANNOTATED

Evidence § 681; Search and Seizure § 5—restrictions on states—admissibility of evidence illegally obtained.

1. The Fourth Amendment is enforceable against the states by the same sanction of exclusion of evidence as is used against the federal government and through the application of the same constitutional standard prohibiting "unreasonable searches and seizures." [*See annotation references* 1, 2]

Evidence § 859; Supreme Court of the United States § 9—rules of evidence in federal criminal trials.

2. The principles governing the admissibility of evidence in federal criminal trials are not restricted to those derived solely from the Federal Constitution; in the exercise of its supervisory authority over the administration of criminal justice in the federal courts, the United States Supreme Court has formulated rules of evidence to be applied in federal criminal prosecutions, but the Court assumes no supervisory authority over state courts.

Courts § 683—federal and state—conflicts.

3. The very essence of a healthy federalism depends upon the avoidance of needless conflicts between state and federal courts.

Search and Seizure § 4—constitutional prohibitions.

4. Implicit in the Fourth Amendment's protection from unreasonable searches and seizures is its recognition of individual freedoms; that safeguard is of the very essence of constitutional liberty the guaranty of which is as important and as imperative as the guaranties of the other fundamental rights of the individual citizens.

Search and Seizure § 6—persons protected.

5. The Fourth Amendment forbids every search that is unreasonable, and protects those suspected or known to be offenders as well as the innocent.

Search and Seizure § 8—place of search.

6. The Fourth Amendment's prohibition of unreasonable searches and seizures extends to the premises where the search was made.

Search and Seizure § 5—standards governing reasonableness.

7. The principle that standards of reasonableness of searches and seizures are not susceptible of Procrustean application is carried forward when the Fourth Amendment's proscriptions are enforced against the states through the Fourteenth Amendment. [*See annotation reference* 2]

Evidence § 681; Search and Seizure § 5; Supreme Court of the United States § 9—obtained through unlawful search and seizure—distinctions.

8. Although the standard of reasonableness of searches and seizures is the same under the Fourth and Fourteenth Amendments, there is a distinction between evidence held inadmissible because of the United States Supreme Court's supervisory powers over federal courts and evidence held inadmissible because prohibited by the United States Constitution. [*See annotation references* 1, 2]

Search and Seizure § 5—unreasonableness—determination by trial court.

9. The reasonableness of a search is in the first instance a substantive determination to be made by the trial court from the facts and circumstances of the case and in the light of the fundamental criteria laid down by the Fourth Amendment and in opinions of the United States Supreme Court applying that amendment.

Appeal and Error § 806.5—state court findings—United States Supreme Court review.

10. On review of a state court judgment of conviction of crime, the United States Supreme Court will respect the state court's findings of reasonableness of a search and seizure only insofar as the finding is consistent with federal constitutional guaranties.

Appeal and Error § 806.5—United States Supreme Court review of state court findings—federal constitutional rights.

11. On review by the United States Supreme Court of state court judgments of conviction of crime, findings of state courts involving federal constitutional rights are by no means insulated against examination by the United States Supreme Court; while the Court does not sit as in nisi prius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the state court findings, such as a finding as to the reasonableness of a search and seizure, the constitutional criteria established by the Supreme Court have been respected.

Arrest § 1; Evidence § 681; Search and Seizure § 4—power of state.

12. The states have power to develop workable rules governing arrests, and searches and seizures, to meet the practical demands of effective criminal investigation and law enforcement in the states, provided that those rules do not violate the Fourth Amendment's proscription of unreasonable searches and seizures, and the concomitant command that evidence so seized is inadmissible against one who has standing to complain. [*See annotation reference* 1]

POINTS FROM SEPARATE OPINIONS

Evidence § 681; Search and Seizure § 12—search as incident to lawful arrest.

13. Evidence obtained by a search without search warrant is admissible only if the search was incident to a lawful arrest. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Arrest § 2—without warrant—probable cause.

14. The lawfulness of an arrest without warrant must be based upon probable cause, which exists where the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 2—without warrant—for narcotics offense—reasonable grounds.

15. Information within the knowledge of state narcotics officers at the time they arrested a suspect at his apartment furnishes grounds for a reasonable belief that the suspect had committed and was committing the offense of possession of marijuana, where some of the officers observed an encounter between a known marijuana dealer and the suspect on the evening of the arrest and, although the officers did not see any substance pass between the two men, their encounter was a virtual re-enactment of the previous night's encounter between the dealer and another narcotics officer, including the sale by the dealer to that officer of a pound of marijuana, the virtual identity of the surrounding circumstances warranting a strong suspicion that the one remaining element, a sale of narcotics, was a part of the encounter preceding the arrest, as it was the previous night, and where, moreover, the officer had information from a reliable informer as well as from other sources, not only that the suspect had been selling marijuana from his apartment but also that his likely source of supply was the dealer. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 4]

Arrest § 2—without warrant—probable cause—hearsay information.

16. That information in possession of a police officer is hearsay does not destroy its role in establishing probable cause supporting an arrest without warrant. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 2—without warrant—for narcotics offense—probable cause.

17. Probable cause for the arrest, without warrant, of the wife of a narcotics suspect, and a reasonable ground for the belief of state narcotics officers that the wife was in joint possession of marijuana with her hus-

band, exist where, upon the officers' entry into the spouse's apartment and announcement of their identity, one of the officers, walking to the doorway of the kitchen, from which the wife had emerged, and without entering the kitchen, observed a package of marijuana in plain view on a scale atop the kitchen sink, and moreover the officers had reliable information that the husband had been using his apartment as a base of operations for his narcotics activities. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 4]

Courts § 625—arrest without warrant—governing law.

18. In cases under the Fourth Amendment the lawfulness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution; a fortiori, the lawfulness of an arrest made by a state officer for a state offense is to be determined by state law. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Courts § 625; Search and Seizure § 12—search in connection with arrest—governing law.

19. Where a person's federal constitutional protection from unreasonable searches and seizures by state police officers for a state offense is to be determined by whether the search was incident to a lawful arrest, the United States Supreme Court is warranted in examining that arrest to determine whether, notwithstanding its legality under state law, the method of entering the home may offend federal constitutional standards of reasonableness and therefore vitiate the legality of an accompanying search. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Arrest § 1—"breaking."

20. The common law recognizes that under certain circumstances breaking a person's house is permissible in executing an arrest. [From separate opinion by Clark, Black, Stewart and White, JJ.]

Search and Seizure § 29—execution of search warrant.

21. Under California law the presence of exigent circumstances constitutes an exception to the notice requirement of a statute authorizing a police officer to break open any part of a house to execute a search warrant if, after notice of his authority and purpose, he is refused admittance. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 2—without warrant—probable cause.

22. In determining the lawfulness of entry and the existence of probable cause supporting an arrest without warrant, the court concerns itself only with what the arresting officers had reason to believe at the time of their entry. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Search and Seizure § 3—legality of search—result.

23. A search is not to be made legal by what it turns up; in law it is good or bad when it starts and does not change character from its success. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 1; Search and Seizure § 12—searches incident to lawful arrest—officers' method of entry.

24. Notwithstanding the failure of state narcotics officers to give notice of their authority and purpose to a narcotics suspect prior to his arrest and the search of his apartment, their method of entry, sanctioned by state law, by obtaining a passkey from the manager of the building is not unreasonable under the standards of the Fourth Amendment as applied to the states through the Fourteenth Amendment, where, in addition to the officers' belief that the suspect was in possession of narcotics, which could be quickly and easily destroyed, his furtive conduct in eluding them shortly before the arrest was ground for the belief that he might well have been expecting the police. [From separate opinion by Clark, Black, Stewart, and White, JJ. Contra: separate opinion by Brennan, J., Warren, Ch. J., and Douglas and Goldberg, J.J.] [*See annotation references*, 2, 3]

Search and Seizure § 12—in connection with arrest.

25. The doctrine that a search without warrant may be lawfully conducted if incident to a lawful arrest is consistent with the Fourth Amendment's protection against unreasonable searches and seizures. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Search and Seizure § 12—in connection with arrest—practicability of obtaining warrant.

26. The practicability of obtaining a warrant is not the controlling factor when a search is sought to be justified as incident to arrest. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Search and Seizure § 12—in connection with arrest—practicability of obtaining search warrant.

27. A search without warrant, incident to a lawful arrest, is not unreasonable, and hence not violative of the Fourth Amendment in that the state narcotics officers involved could practicably have obtained a search warrant, where the officers' observations and their corroboration, which furnished probable cause for the suspect's arrest, occurred at about 9 p.m., approximately one hour before the time of arrest, and the officers had reason to set quickly because of the suspect's furtive conduct and the likelihood that the marijuana in his possession would be distributed or hidden before a warrant could be obtained at that time of night. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Search and Seizure § 12—in connection with arrest—extent of premises searched.

28. The search, as an incident to a narcotics suspect's lawful arrest, of the kitchen and bedroom of his apartment, is within the rule that such search may, under appropriate circumstances, extend beyond the person of the one arrested to include the premises under his immediate control. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Search and Seizure § 12—in connection with arrest.

29. The rule that an arrest may not be used merely as the pretext for a search without warrant is not violated where the record shows that the arresting officers entered the suspect's apartment for the purpose of arresting him and that they had probable cause to make that arrest prior to the entry. [From separate opinion by Clark, Black, Stewart and White, JJ.] [*See annotation reference* 3]

Search and Seizure § 2—what constitutes search.

30. The discovery by a police officer entering a suspect's apartment of a brick of marijuana on a scale atop the kitchen sink does not constitute a search, since the officer merely saw what was placed before him in full view. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

31. California law does not require that an arrest precede an incidental search as long as probable cause exists at the outset. [From separate opinion by Clark, Black, Stewart, and White, JJ.] [*See annotation reference* 3]

Appeal and Error §§ 1084(2), 1088, 1123—questions not properly raised.

32. On review of a state court judgment of conviction of crime, the United States Supreme Court will not reach the question of the reasonableness of the search of defendant's automobile on the day subsequent to his arrest where that question was not raised in the petition for certiorari, nor discussed in the brief filed in the United States Supreme Court, nor in the state trial court nor in the state appellate court, and the latter court did not adjudicate it. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Appeal and Error § 1104; Courts § 95.3—scope of review—questions not raised.

33. Ordinarily the United States Supreme Court does not reach for constitutional questions not raised by the parties, nor extend its review beyond those specific federal questions properly raised in the state court. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Appeal and Error § 431—from state court—federal question.

34. There can be no question as to the proper presentation of a federal claim when the highest state court passes on it. [From separate opinion by Clark, Black, Stewart, and White, JJ.]

Arrest § 1; Search and Seizure § 12—search as incident to arrest—prerequisities of validity.

35. Even if probable cause exists for the arrest of a person within, the Fourth Amendment's prohibition of unreasonable searches and seizures is violated by an unannounced police intrusion into a private home, with or without an arrest warrant, except (1) where the persons within already know of the officers' authority and purpose, or (2) where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door) are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted. [From separate opinion by Brennan, J. Warren, Ch. J., and Douglas and Goldberg, JJ.]

Search and Seizure § 5—constitutional protection—lawful entry.

36. A lawful entry is the indispensable predicate of a reasonable search within the meaning of the Fourth Amendment guaranteeing the right of the people to be secure against unreasonable searches and seizures. [From separate opinion by Brennan, J., Warren, Ch. J., and Douglas and Goldberg, JJ.]

Courts § 95.3—constitutional question.

37. The United States Supreme Court will not decide constitutional questions when a nonconstitutional basis for decision is available. [From separate opinion by Brennan, J., Warren, Ch. J., and Douglas and Goldberg, JJ.]

APPEARANCES OF COUNSEL

Robert W. Stanley argued the cause for petitioners.

Gordon Ringer argued the cause for respondent.

Briefs of Counsel, p. 1312, infra.

OPINION OF THE COURT

*[374 US 24]

*Mr. Justice Clark delivered the opinion of the Court with reference to the standard by which state searches and seizures must be evaluated (Part I), together with an opinion applying that standard, in which Mr. Justice Black, Mr. Justice Stewart and Mr. Justice White join (Parts II–V), and announced the judgment of the Court.

This case raises search and seizure questions under the rule of Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933 (1961). Petitioners, husband and wife, were convicted of possession of mari-

juana in violation of § 11530 of the California Health and Safety Code. The California District Court of Appeal affirmed, 195 Cal App 2d 246, 15 Cal Rptr 767, despite the contention of petitioners that their

*[374 US 25]

arrests in their *apartment without warrants lacked probable cause[1] and the evidence seized incident thereto and introduced at their trial was therefore inadmissible. The California Supreme Court denied without opinion a petition for hearing. This being the first case arriving here since our opinion in Mapp which would afford suitable opportunity for further explication of that holding in the light of intervening experience, we granter certiorari. 368 US 974, 7 L ed 2d 437, 82 S Ct 840. We affirm the judgment before us.

The state courts' conviction and affirmance are based on these events, which culminated in the petitioners' arrests. Sergeant Cook of the Los Angeles County Sheriff's Office, in negotiating the purchase of marijuana from one Terrhagen, accompanied him to a bowling alley about 7 p.m. on July 26, 1960, where they were to meet Terrhagen's "connection." Terrhagen went inside and returned shortly, pointing to a 1946 DeSoto as his "connection's" automobile and explaining that they were to meet him "up by the oil fields" near Fairfax and Slauson Avenues in Los Angeles. As they neared that location, Terrhagen again pointed out the DeSoto traveling ahead of them, stating that the "connection" kept his supply of narcotics "somewhere up in the hills." They parked near some vacant fields in the vicinity of the intersection of Fairfax and Slauson, and, shortly thereafter, the DeSoto reappeared and pulled up beside them. The deputy then recognized the driver as one Roland Murphy, whose "mug" photograph he had seen and whom he knew from other narcotics officers to be a large-scale seller of marijuana currently out on bail in connection with narcotics charges.

*[374 US 26]

*Terrhagen entered the DeSoto and drove off toward the oil fields with Murphy, while the Sergeant waited. They returned shortly, Terrhagen left Murphy's car carrying a package of marijuana and entered his own vehicle, and they drove to Terrhagen's residence. There Terrhagen cut one pound of marijuana and gave it to Sergeant Cook, who had previously paid him. The Sergeant later reported this occurrence to Los Angeles County Officers Berman and Warthen, the latter of whom had observed the occurrences as well.

On the following day, July 27, Murphy was placed under surveillance. Officer Warthen, who had observed the Terrhagen-Murphy episode the previous night, and Officer Markman were assigned this duty. At about 7 p.m. that evening they followed Murphy's DeSoto as he drove to the same bowling alley in which he had met Terrhagen on the previous evening. Murphy went inside, emerged in about 10 minutes and drove to a house where he made a brief visit. The officers continued to follow him but, upon losing sight of his vehicle, proceeded to the vicinity of Fairfax and Slauson Avenues where they parked. There, immediately across the street from the location at which Terrhagen and Sergeant Cook had met Murphy on the previous evening, the officers observed a parked automobile whose lone occupant they later determined to be the petitioner George Douglas Ker.

The officers then saw Murphy drive past them. They followed him but lost sight of him when he extinguished his lights and entered the oil fields. The officers returned to their vantage point and, shortly thereafter, observed Murphy return and park behind Ker. From their location approximately 1,000 feet from the two vehicles, they watched through field glasses. Murphy was seen leaving his DeSoto and walking up to the driver's side of Ker's car, where he "appeared to have conversation with him." It was shortly before 9 p.m. and the distance in

*[374 US 27]

the *twilight was too great for the officers to see anything pass between Murphy and Ker or whether the former had anything in his hands as he approached.

While Murphy and Ker were talking, the officers had driven past them in order to see their faces closely and in order to take the license number from Ker's vehicle. Soon thereafter Ker drove away and the officers followed him but lost him when he made a U-turn in the middle of the block and drove in the opposite direction. Now, having lost contact with Ker, they checked the registration with the Department of Motor Vehicles and ascertained that the automobile was registered to Douglas Ker at 4801 Slauson. They then communicated this information to Officer Berman, within 15 to 30 minutes after observing the meeting between Ker and Murphy. Though officers Warthen and Markman had no previous knowledge of Ker, Berman had received information at various times beginning in November of 1959 that Ker was selling marijuana from his apartment and that "he was possibly securing this Marijuana from Ronnie Murphy who is the alias of Roland Murphy." In early 1960 Officer Berman had received a "mug" photograph of Ker from the Inglewood Police Department. He further testified that between May and July 27, 1960, he had received information as to Ker from one Robert Black, who had previously given information leading to at least three arrests and whose information was believed by Berman to be reliable. According to Officer Berman, Black had told him on four or five occasions after May 1960 that Ker and others, including himself, had purchased marijuana from Murphy.[2]

*[374 US 28]

*Armed with the knowledge of the meeting between Ker and Murphy and with Berman's information as to Ker's dealings with Murphy, the three officers and a fourth, Officer Love, proceeded immediately to the address which they had obtained through Ker's license number. They found the automobile which they had been following—and which they had learned was Ker's—in the parking lot of the multiple-apartment building and also ascertained that there was someone in the Kers' apartment. They then went to the office of the building manager and obtained from him a passkey to the apartment. Officer Markman was stationed outside the window to intercept any evidence which might be ejected, and the other three officers entered the apartment. Officer Berman unlocked and opened the door, proceeding quietly, he testified, in order to prevent the destruction of evidence,[3] and found petitioner George Ker sitting in the living room. Just as he identified himself, stating that "We are Sheriff's Narcotics Officers, conducting a narcotics investigation," petitioner Diane Ker emerged from the kitchen. Berman testified that he repeated his identification to her and immediately walked to the kitchen. Without entering, he observed through the open doorway a small scale atop the kitchen sink, upon which lay a "brick-like—brick-shaped package containing the green leafy substance" which he recognized as marijuana. He beckoned the petitioners into the kitchen where, following their denial of knowledge of the contents of the two-and-two-tenths-pound package and

*[374 US 29]

*failure to answer a question as to its ownership, he placed them under arrest for suspicion of violating the State Narcotic Law. Officer Markman testified that he entered the apartment approximately "a minute, minute and a half" after the other officers, at which time Officer Berman was placing the petitioners under arrest. As to this sequence of events, petitioner George Ker testified that his arrest took place immediately upon the officers' entry and before they saw the brick of marijuana in the kitchen.

Subsequent to the arrest and the petitioners' denial of possession of any other narcotics, the officers, proceeding without search warrants, found a half-ounce package of marijuana in the kitchen cupboard and another atop the bedroom dresser. Petitioners were asked if they had any automobile other than the one observed by the officers, and George Ker replied in the negative, while Diane remained silent. On the next day, having learned that an automobile was registered in the name of Diane Ker, Officer Warthen searched this car without a warrant, finding marijuana and marijuana seeds in the glove compartment and under the rear seat. The marijana found on the kitchen scale, that found in the kitchen cupboard and in the bedroom, and that found in Diane Ker's automobile[4] were all introduced into evidence against the petitioners.

The California District Court of Appeal in affirming the convictions found that there was probable cause for the arrests; that the entry into the apartment was for the purpose of arrest and was not unlawful; and that the search being incident to the arrests was likewise lawful and its fruits admissible in evidence against petitioners. These conclusions were essential to the affirmance, since the California Supreme Court in 1955

*[374 US 30]

had held that evidence *obtained by means of unlawful searches and seizures was inadmissible in criminal trials. People v. Cahan, 44 Cal 2d 434, 282 P2d 905, 50 ALR2d 513. The court concluded that in view of its findings and the implied findings of the trial court, this Court's intervening decision in Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, supra, did "not justify a change in our original conclusion." 195 Cal App 2d, at 257 15 Cal Rptr, at 773.

I.

In Mapp v Ohio, 367 US at 646, 647, 657, we followed Boyd v United States, 116 US 616, 630, 29 L ed 746, 751, 6 S Ct 524 (1886), which held that the Fourth Amendment,[5] implemented by the self-incrimination clause of the Fifth,[6] forbids the Federal Government to convict a man of crime by using testimony or papers obtained from him by unreasonable searches and seizures as defined in the Fourth Amendment. We specifically held in Mapp that this constitutional prohibition is enforceable against the States through the Fourteenth Amendment.[7] This means, as we said in—Headnote 1—Mapp, that the Fourth Amendment "is enforceable against them [the states] by the same sanction of exclusion as is used against the Federal Government," by the application of the same constitutional standard prohibiting "unrea-

*[374 US 31]

sonable *searches and seizures." 367 US, at 655. We now face the specific question as to whether Mapp requires the exclusion of evidence in this case which the California District Court of Appeal has held to be lawfully seized. It is perhaps ironic that the initial test under the Mapp holding comes from California, whose decision voluntarily to adopt the exclusionary rule in 1955 has been commended by us previously. See Mapp v Ohio, supra (367 US at 651, 652); Elkins v United States, 364 US 206, 220, 4 L ed 2d 1669, 1679, 80 S Ct 1437 (1960).

Preliminary to our examination of the search and seizures involved here, it might be helpful for us to indicate what was not decided in Mapp. First, it must be recognized

Footnotes at end of article.

that the "principles governing—Headnote 2—the admissibility of evidence in federal criminal trials have not been restricted . . . to those derived solely from the Constitution. In the exercise of its supervisory authority over the administration of criminal justice in the federal courts . . . this Court has . . . formulated rules of evidence to be applied in federal criminal prosecutions." McNabb v United States, 318 US 332, 341, 87 L ed 819, 824, 63 S Ct 608 (1943); cf. Miller v United States, 357 US 301, 2 L ed 2d 1332, 78 S Ct 1190 (1958); Nardone v United States, 302 US 379, 82 L ed 314, 58 S Ct 275 (1937). Mapp, however, established no assumption by this Court of supervisory authority over state courts, cf. Cleary v Bolger, 3"1 US 392, 401, 9 L ed 2d 390, 396, 83 S Ct 385 (1963), and, consequently, it implied no total obliteration of state laws relating to arrests and searches in favor of federal law. Mapp sounded no death knell for our federalism; rather, it echoed the sentiment of Elkins v United States, supra (364 at 221).—Headnote 3—that "a healthy federalism depends upon the avoidance of needless conflict between state and federal courts" by itself urging that "[f]ederal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect *the same fundamental criteria* in their approaches." 367 US, at 658. (Emphasis added.) Second, Mapp did not attempt the impossible task

*[374 US 32]

of laying *down a "fixed formula" for the application in specific cases of the constitutional prohibition against unreasonable searches and seizures; it recognized that we would be "met with 'recurring questions of the reasonableness of searches' " and that, "at any rate, '[r]easonableness is in the first instance for the [trial court] . . . to determine,' " id. 367 US at 653, thus indicating that the usual weight be given to findings of trial courts.

Mapp, of course, did not lend itself to a detailed explication of standards, since the search involved there was clearly unreasonable and bore no stamp of legality even from the Ohio Supreme Court. Id. 367 US at 643–645. This is true also of Elkins v United States, where all of the courts assumed the unreasonableness of the search in question and this Court "invoked" its "supervisory power over the administration of criminal justice in the federal courts," 364 US, at 216, in declaring that the evidence so seized by state officers was inadmissible in a federal prosecution. The prosecution being in a federal court, this Court of course announced that "[t]he test is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed." Id. 364 US at 224. Significant in the Elkins holding is the statement, apposite here, that "it can fairly be said that in applying the Fourth Amendment this Court has seldom shown itself unaware of the practical demands of effective criminal investigation and law enforcement." Id. 364 US at 222.

Implicit in the Fourth Amendment's protection from unreasonable searches and seizures is its recognition of individual freedom.—Headnote 4—That safeguard has been declared to be "as of the very essence of constitutional liberty" the guaranty of which "is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen . . . ." Gouled v United States, 255 US 298, 304, 65 L ed 647, 650, 41 S Ct 261 (1921); cf. Powell v Alabama, 287

*[374 US 33]

US *45. 65–68, 77 L ed 158, 168–170, 53 S Ct 55, 84 ALR 527 (1932). While the language of the Amendment is "general," it "forbids every—Headnote 5—search that is unreasonable; it protects all, those—Headnote 6—suspected or known to be offenders as well as the innocent, and unquestionably extends to the premises where the search was made . . . ." Go-Bart Importing Co. v. United States, 282 US 344, 357, 75 L ed 374, 382, 51 S Ct 153 (1931). Mr. Justice Butler there stated for the Court that "(t)he Amendment is to be liberally construed and all owe the duty of vigilance for its effective enforcement lest there shall be impairment of the rights for the protection of which it was adopted." Ibid. He also recognized that "(t)here is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." Ibid; see United States v Rabinowitz, 339 US 56, 63, 94 L ed 653, 658, 70 S Ct 430 (1950); Rios v United States, 364 US 253, 255, 4 L ed 2d 1688, 1690, 80 S Ct 1431 (1960).

This Court's long-established recognition that standards of reasonableness under the—Headnote 7—Fourth Amendment are not susceptible of Procrustean application is carried forward when that Amendment's proscriptions are enforced against the States through the Fourteenth Amendment. And, although the—Headnote 8—standard of reasonableness is the same under the Fourth and Fourteenth Amendments, the demands of our federal system compel us to distinguish between evidence held inadmissible because of our supervisory powers over federal courts and that held inadmissible because prohibited by the United States Constitution. We—Headnote 9—reiterate that the reasonableness of a search is in—Headnote 10—the first instance a substantive determination to be made by the trial court from the facts and circumstances of the case and in the light of the "fundamental criteria" laid down by the Fourth Amendment and in opinions of this Court applying that Amendment. Findings of reasonableness, of course, are respected only insofar as consistent with federal constitutional guarantees. As we have stated above and in other cases involving

*[374 US 34]

*federal constitutional rights, findings of state courts are—Headnote 11—by no means insulated against examination here. See, e.g., Spano v New York, 360 US 315, 316, 3 L ed 2d 1265, 1267, 79 S Ct 1202 (1959); Thomas v. Arizona, 356 US 390, 393, 2 L ed 2d 863, 866, 78 S Ct 885 (1958); Pierre v Louisiana, 306 US 354, 358, 83 L ed 751, 760, 59 S Ct 536 (1939). While this Court does not sit as in nisi prius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental—i.e., constitutional—criteria established by this Court have been respected. The States are not thereby—Headnote 12—precluded from developing workable rules governing arrests, searches and seizures to meet "the practical demands of effective criminal investigation and law enforcement" in the States, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence so seized is inadmissible against one who has standing to complain. See Jones v United States, 362 US 257, 4 L ed 2d 697, 80 S Ct 725, 78 ALR2d 233 (1960). Such a standard implies no derogation of uniformity in applying federal constitutional guarantees but is only a recognition that conditions and circumstances vary just as do investigative and enforcement techniques.

Applying this federal constitutional standard we proceed to examine the entire record including the findings of California's courts to determine whether the evidence seized from petitioners was constitutionally admissible under the circumstances of this case.

II.—SEPARATE OPINION †

The evidence at issue, in order to be admissible, must be the product—Headnote 13—of a search incident to a lawful arrest, since the—Headnote 14—officers had no search warrant. The lawfulness of the arrest without warrant, in

*[374 US 35]

turn, must be based upon *probable cause, which exists "where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." Brinegar v United States, 338 US 160, 175, 176, 93 L ed 1879, 1890, 69 S Ct 1302 (1949), quoting from Carroll v United States, 267 US 132, 162, 69 L ed 543, 555, 45 S Ct 280, 39 ALR 790 (1925); accord, People v Fischer, 49 Cal 2d 442, 317 P2d 967 (1957); Bompensiero v Superior Court of San Diego County, 44 Cal 2d 178, 281 P2d 250 (1955).—Headnote 15—The information within the knowledge of the officers at the time they arrived at the Kers' apartment, as California's courts specifically found, clearly furnished grounds for a reasonable belief that petitioner George Ker had committed and was committing the offense of possession of marijuana. Officers Markman and Warthen observed a rendezvous between Murphy and Ker on the evening of the arrest which was a virtual reenactment of the previous night's encounter between Murphy, Terrhagen and Sergeant Cook, which concluded in the sale by Murphy to Terrhagen and the Sergeant of a package of marijuana of which the latter had paid Terrhagen for one pound which he received from Terrhagen after the encounter with Murphy. To be sure, the distance and lack of light prevented the officers from seeing and they did not see any substance pass between the two men, but the virtual identity of the surrounding circumstances warranted a strong suspicion that the one remaining element—a sale of narcotics—was a part of this encounter as it was the previous night. But Ker's arrest does not depend upon this single episode with Murphy. When Ker's U-turn thwarted the officer's pursuit, they learned his name and address from the Department of Motor Vehicles and reported the occurrence to Officer Berman. Berman, in turn, revealed information from an informer whose reliability had been

*[374 US 36]

tested previously, as * well as from other sources, not only that Ker had been selling marijuana from his apartment but also that his likely source of supply was Murphy himself.—Headnote 16—That this information was hearsay does not destroy its role in establishing probable cause. Brinegar v. United States, 338 US 160, 93 L ed 1879, 69 S Ct 1302, supra. In Draper v United States, 358 US 307, 3 L ed 2d 327, 79 S Ct 329 (1959), we held that information from a reliable informer, corroborated by the agents' observations as to the accuracy of the informer's description of the accused and of his presence at a particular place, was sufficient to establish probable cause for an arrest without warrant.* The corroborative elements in Draper were innocuous in themselves, but here both the informer's tip and the personal observations connected Ker with specific illegal activities involving the same man, Murphy, a known marijuana dealer. To say that this coincidence of information was sufficient to support a reasonable belief of the officers that Ker was illegally in possession of marijuana is to indulge in understatement.

Probable cause for the arrest of petitioner Diane Ker, while not—Headnote 17—present at the time the officers entered the apartment to arrest her husband, was nevertheless present at the time of her arrest. Upon

Footnotes at end of article.

their entry and announcement of their identity, the officers were met not only by George Ker but also by Diane Ker, who was emerging from the kitchen. Officer Berman immediately walked to the doorway from which she emerged and, without entering, observed the brick-shaped package of marijuana in plain view. Even assuming that her presence

*[374 US 37]

* in a small room with the contraband in a prominent position on the kitchen sink would not alone establish a reasonable ground for the officers' belief that she was in joint possession with her husband, that fact was accompanied by the officers' information that Ker had been using his apartment as a base of operations for his narcotics activities. Therefore, we cannot say that at the time of her arrest there were not sufficient grounds for a reasonable belief that Diane Ker, as well as her husband, was committing the offense of possession of marijuana in the presence of the officers.

III.

It is contended that the lawfulness of the petitioners' arrests, even if they were based upon probable cause, was vitiated by the method of entry. This Court, in cases under—Headnote 18—the Fourth Amendment, has long recognized that the lawfulness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution. Miller v United States, 357 U.S. 301, 2 L ed 2d 1332, 78 S Ct 1190, supra; United States v Di Re, 332 U.S. 581, 92 L ed 210, 68 S Ct 222 (1948); Johnson v United States, 333 U.S. 10, 15, note 5 92 L ed 436, 441, 68 S Ct 367 (1948). A fortiori, the lawfulness of these arrests by state officers for state offenses is to be determined by California law. California Penal Code, § 844,[9] permits peace officers to break into a dwelling place for the purpose of arrest after demanding admittance and explaining their purpose. Admittedly the officers did not comply with the terms of this statute since they entered quietly and without announcement, in order to prevent the destruction of contraband. The California District Court

* [374 U.S. 38]

of Appeal, * however, held that the circumstances here came within a judicial exception which had been engrafted upon the statute by a series of decisions, see, e.g., People v Ruiz, 146 Cal App 2d 630 304 P2d 175 (1956); People v Maddox, 46 Cal 2d 301, 294 P2d 6, cert den 352 U.S. 858, 1 L ed 2d 65, 77 S Ct 81 (1956), and that the noncompliance was therefore lawful.

Since the petitioners' federal constitutional protection from unreasonable searches and—Headnote 19—seizures by police officers is here to be determined by whether the search was incident to a lawful arrest, we are warranted in examining that arrest to determine whether, notwithstanding its legality under state law, the method of entering the home may offend federal constitutional standards of reasonableness and therefore vitiate the legality of an accompanying search. We find no such offensiveness on the facts here. Assuming that the officers' entry by use of a key obtained from the manager is the legal equivalent of a "breaking," see Keiningham v United States, 109 App DC 272, 276, 287 F2d 126, 130—Headnote 20—(1960), it has been recognized from the early common law that such breaking is permissible in executing an arrest under certain circumstances. See Wilgus, Arrest Without a Warrant, 22 Mich L Rev 541, 798, 800–806 (1924). Indeed, 18 USC § 3109,[10] dealing with the execution of search warrants by federal officers, authorizes breaking of doors in words very similar to those of the California statute, both statutes including a requirement of notice of authority and purpose. In Miller v United States, 357 U.S. 301, 2 L ed 2d 1332, 78 S Ct 1190, supra, this Court held unlawful an arrest, and therefore its accompanying search, on the ground that the Dis-

*[374 US 39]

trict of *Columbia officers before entering a dwelling did not fully satisfy the requirement of disclosing their identity and purpose. The Court stated that "the lawfulness of the arrest without warrant is to be determined by reference to state law. . . . By like reasoning the validity of the arrest of petitioner is to be determined by reference to the law of the District of Columbia." 357 US, at 305, 306. The parties there conceded and the Court accepted that the criteria for testing the arrest under District of Columbia law were "substantially identical" to the requirements of § 3109. Id. 357 US at 306. Here, however—Headnote 21—the criteria under California law clearly include an exception to the notice requirement where exigent circumstances are present. Moreover, insofar as violation of a federal statute required the exclusion of evidence in Miller, the case is inapposite for state prosecutions, where admissibility is governed by constitutional standards. Finally, the basis of the judicial exception to the California statute, as expressed by Justice Traynor in People v Maddox, supra (46 Cal 2d at 306), effectively answers the petitioners' contention:

"It must be borne in mind that the primary purpose of the constitutional guarantees is to prevent unreasonable invasions of the security of the people in their persons, houses, papers, and effects, and when an officer has reasonable cause to enter a dwelling to make an arrest and as an incident to that arrest is authorized to make a reasonable search, his entry and his search are not unreasonable. Suspects have no constitutional right to destroy or dispose of evidence, and no basic constitutional guarantees are violated because an officer succeeds in getting to a place where he is entitled to be more quickly than he would, had he complied with section 844. Moreover, since the demand and explanation requirements

*[374 US 40]

*of section 844 are a codification of the common law, they may reasonably be interpreted as limited by the common law rules that compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose. (Read v. Case, 4 Conn. 166, 170 [10 Am. Dec. 110]; see Rest., Torts, § 206, com. d.) Without the benefit of hindsight and ordinarily on the spur of the moment, the officer must decide these questions in the first instance."

No such exigent circumstances as would authorize noncompliance with the California statute were argued in Miller, and the Court expressly refrained from discussing the question, citing the *Maddox Case* without disapproval. 357 US, at 309.[11] Here justification for the officers' failure to give notice is uniquely present. In addition to the officers' belief that Ker was in possession of narcotics, which could be quickly and easily destroyed, Ker's furtive conduct in eluding them shortly before the arrest was ground for the belief that he might well have been expecting the police.[12] We therefore hold that in the particu-

*[374 US 41]

Headnote 24—lar *circumstances of this case the officers' method of entry, sanctioned by the law of California, was not unreasonable under the standards of the Fourth Amendment as applied to the States through the Fourteenth Amendment.

IV.

Having held the petitioners' arrests lawful, it remains only to consider whether the search which produced the evidence leading to their convictions was lawful as incident to those arrests. The doctrine that a search without warrant—Headnote 25—may be lawfully conducted if incident to a lawful arrest has long been recognized as consistent with the Fourth Amendment's protection against unreasonable searches and seizures. See Marron v United States, 275 US 192, 72 L ed 231, 48 S Ct 74 (1927); Harris v United States, 331 US 145, 91 L ed 1399, 67 S Ct 1098 (1947); Abel v United States, 362 US 217, 4 L ed 2d 668, 80 S Ct 683 (1960); Kaplan, Search and Seizure: A No-Man's Land in the Criminal Law, 49 Cal L Rev 474, 490–493 (1961). The cases have imposed no requirement that the arrest be under authority of an arrest warrant, but only that it be lawful. See Marron v United States, supra (275 US at 198, 199); United States v Rabinowitz, supra (339 US at 61); cf. Agnello v United States, 269 US 20, 30, 31, 70 L ed 145, 148, 46 S Ct 4, 51 ALR 409 (1925). The question remains whether the officers' action here exceeded the recognized bounds of an incidental search.

Petitioners contend that the search was unreasonable in that the officers could practicably have obtained a search warrant. The practicability—Headnote 26—of obtaining a warrant is not the controlling—Headnote 27—factor when a search is sought to be justified as incident to arrest, United States v Rabinowitz, 339 US 56, 94

*[374 US 42]

L ed 653, 70 S Ct 430, supra; *but we need not rest the validity of the search here on Rabinowitz, since we agree with the California court that time clearly was of the essence. The officers' observations and their corroboration, which furnished probable cause for George Ker's arrest, occurred at about 9 p.m., approximately one hour before the time of arrest. The officers had reason to act quickly because of Ker's furtive conduct and the likelihood that the marijuana would be distributed or hidden before a warrant could be obtained at that time of night.[13] Thus the facts bear no resemblance to those in Trupiano v. United States, 334 US 699,, 92 L ed 1663, 68 S Ct 1229 (1948), where federal agents for three weeks had been in possession of knowledge sufficient to secure a search warrant.

The search of the petitioners' apartment was well within the limits—Headnote 28—upheld in Harris v. United States, 331 US 145, 91 L ed 1399, 67 S Ct 1098, supra, which also concerned a private apartment dwelling. The evidence here, unlike that in Harris, was the instrumentality of the very crime for which petitioners were arrested, and the record does not indicate that the search here was as extensive in time or in area as that upheld in Harris.

The petitioners' only remaining contention is that the discovery of the brick of marijuana cannot be justified as incidental to arrest since it preceded the arrest. This contention is of course contrary to George Ker's testimony, but we reject it in any event. While an arrest may not—Headnote 29—be used merely as the pretext for a search without warrant, the California court specifically found and the record supports both that the officers entered the

*[374 US 43]

apartment for *the purpose of arresting George Ker and that they had probable cause to make that arrest prior to the entry.[14] We cannot say that it was unreasonable for Officer Berman, upon seeing Diane Ker emerge from the kitchen, merely to walk to the doorway of that adjacent room.—Headnote 30—We thus agree with the California court's holding that the discovery of the brick of marijuana did not constitute a search, since the officer merely saw what was placed before him in full view. United States v Lee, 274 US 559, 71 L ed 1202, 47 S Ct 746 (1927); United States v Lefkowitz, 285 US 452, 465, 76 L ed 877, 882, 52 S Ct 420, 82 ALR 775 (1932); People v West, 144 Cal App 2d 214, 300 P2d 729 (1956). Therefore, while California—Headnote 31—

Footnotes at end of article.

law does not require that an arrest precede an incidental search as long as probable cause exists at the outset, Willson v Superior Court of San Diego County, 46 Cal 2d 291, 294 P2d 36 (1956), the California court did not rely on that rule and we need not reach the question of its status under the Federal Constitution.

V.

The petitioners state and the record bears out that the officers searched Diane Ker's automobile on the day subsequent to her arrest.—The reasonableness of Headnote 32—that search, however—Headnote 33—was not raised in the petition for certiorari, nor was it discussed in the brief here. Ordinarily "[w]e do not reach for constitutional questions not raised by the parties," Mazer v Stein, 347 US 201, 206, 98 L ed 630, 636, 74 S Ct 460 note 5 (1954), nor extend our review beyond those specific

*[374 US 44]

federal questions *properly raised in the state court. The record gives no indication that the issue was raised in the trial court or in the District Court of Appeal, the latter court did not adjudicate it and we therefore find no reason to reach it on the record.[15]

For these reasons the judgment of the California District Court of Appeal is

Affirmed.

FOOTNOTES

[1] This contention was initially raised prior to the trial. Section 995, California Penal Code, provides for a motion to set aside the information on the ground that the defendant has been committed without probable cause. Evidence on that issue was presented out of the presence of the jury, and following the court's denial of the motion, the petitioners were tried and convicted by the jury.

[2] During the hearing on the § 995 motion, see note 1, supra, Black testified for the defense, admitting that he knew the petitioners but denying that he gave Officer Berman information about George Ker. Black first denied but then admitted that he had met with Officer Berman and another officer in whose presence Berman said the information about Ker was given.

[3] Arresting Officers Berman and Warthen had been attached to the narcotics detail of the Los Angeles County Sheriff's office for three and four years, respectively. Each had participated in hundreds of arrests involving marijuana. Warthen testified that on "many, many occasions" in his experience with narcotics arrests "persons have flushed narcotics down toilets, pushed them down drains and sinks and many other methods of getting rid of them prior to my entrance. . . ."

[4] For the reasons discussed in § V of this opinion, we find that the validity of the search of the automobile is not before us and we therefore do not pass on it.

[5] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[6] "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ."

[7] Our holding as to enforceability of this federal constitutional rule against the States had its source in the following declaration on Wolf v Colorado, 338 US 25, 27, 28, 93 L ed 1782, 1785, 69 S Ct 1359 (1949):

"The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is . . . implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."

†Editor's Note: As stated on p. 732, supra, Parts II–V hereof represent the separate opinion of Clark, Black, Stewart, and White, JJ.

[8] In Draper the arrest upon probable cause was authorized under 26 USC, § 7607, authorizing narcotics agents to make an arrest without warrant if they have "reasonable grounds to believe that the person to be arrested has committed or is committing such violation." Under § 836, California Penal Code, an officer may arrest without a warrant if he has "reasonable cause to believe that the person to be arrested has committed a felony. . . ."

[9] "To make an arrest, . . . in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which . . . [he has] reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

[10] "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

[11] Nor has the Court rejected the proposition that noncompliance may be reasonable in exigent circumstances subsequent to Miller. In Wong Sun v United States, 371 US 471, 9 L ed 2d 441, 83 S Ct 407 (1963), the Court held that federal officers had not complied with § 3109 in executing an arrest. There the Court noted that in Miller it had reserved the question of an exception in exigent circumstances and stated that "[h]ere, as in Miller, the Government claims no extraordinary circumstances—such as the imminent destruction of vital evidence, or the need to rescue a victim in peril—. . . which excused the officer's failure truthfully to state his mission before he broke in." Id. 371 U.S. at 483, 484.

[12] A search of the record with the aid of hindsight may lend some support to—Headnote 22—the conclusion that, contra the reasonable belief of the—Headnote 23—officers, petitioners may not have been prepared for an imminent visit from the police. It goes without saying that in determining the lawfulness of entry and the existence of probable cause we may concern ourselves only with what the officers had reason to believe *at the time of their entry*. Johnson v United States, 333 US 10, 17, 92 L ed 436, 442, 68 S Ct 367 (1948). As the Court said in United States v Di Re, 332 US 581, 595, 92 L ed 210, 220, 68 S Ct 222 (1948), "a search is not to be made legal by what it turns up. In law it is good *or bad* when it starts and does not change character from" what is dug up subsequently. (Emphasis added.)

[13] In cases in which a search could not be regarded as incident to arrest because the petitioner was not present at the time of the entry and search, the absence of compelling circumstances, such as the threat of destruction of evidence, supported the Court's holdings that searches without warrants were unconstitutional. See Chapman v United States, 365 US 610, 615, 5 L ed 2d 828, 832, 81 S Ct 776 (1961); United States v Jeffers, 342 US 48, 52, 96 L ed 59, 64, 72 S Ct 93 (1951); Taylor v United States, 286 US 1, 5, 76 L ed 951, 953, 52 S Ct 466 (1932).

[14] Compare Johnson v United States, note 12, supra (333 US at 40). There the Court held that a search could not be justified as incident to arrest since the officers, prior to their entry into a hotel room, had no probable cause for the arrest of the occupant. The Court stated that "[a]n officer gaining access to private living quarters under color of his office and of the law which he personifies must then have some valid basis in law for the intrusion." Here, of course, probable cause for the arrest of petitioner George Ker provided that valid basis.

[15] The record shows that petitioners made no objection to the admission of any of the evidence, thus failing to observe a state procedural requirement, People v Brittain, 149 Cal App 2d 201, 308 P2d 38 (1957); see Mapp v Ohio, supra (367 US at 659, note 9). However, the District Court of Appeal passed on the issue of the narcotics seized in the apartment, presumably on the ground that petitioners preserved that question by their motion under § 995, California Penal Code, which was directed toward the principal objection to that search—the alleged lack of probable cause. While "[t]here can be no question as to the proper—Headnote 34—presentation of a federal claim when the highest state court passes on it," Raley v Ohio, 360 US 423, 436, 3 L ed 2d 1344, 1354, 78 S Ct 1257 (1959), there is no indication in the court's opinion that it passed on the issue of the search of the automobile, nor is there any indication in the petitioners' briefs in that court that the issue was presented.

ADDITIONAL SEPARATE OPINIONS

Mr. Justice Harlan, concurring in the result.

Heretofore there has been a well-established line of demarcation between the constitutional principles governing the standards for state searches and seizures and those controlling federal activity of this kind. Federal searches and seizures have been subject to the requirement of "reasonableness" contained in the Fourth Amendment, as that requirement has been elaborated over the years in federal litigation. State searches and seizures, on the other hand, have been judged, and in my view properly so, by the more flexible concept of "fundamental" fairness, or rights "basic to a free society," embraced in the Due Process Clause of the

*[374 US 45]

Fourteenth Amendment. * See Wolf v Colorado, 338 US 25, 27, 93 L ed 1782, 1785, 69 S. Ct 1359; [1] cf. Rochin v. California, 342 US 165, 96 L ed 183, 72 S Ct 205, 25 ALR2d 1396; Palko v Connecticut, 302 US 319, 82 L ed 288, 58 S Ct 149. Today this distinction in constitutional principle is abandoned. Henceforth state searches and seizures are to be judged by the same constitutional standards as apply in the federal system.

In my opinion this further extension of federal power over state criminal cases, cf. Fay v Noia, 372 US 391, 9 L ed 2d 837, 83 S Ct 822; Douglas v California, 372 US 353, 9 L ed 2d 811, 83 S Ct 814; Draper v Washington, 372 US 487, 9 L ed 2d 899, 83 S Ct 774—all decided only a few weeks ago, is quite uncalled for and unwise. It is uncalled for because the States generally, and more particularly California, are increasingly evidencing concern about improving their own criminal procedures, as this Court itself has recently observed on more than one occasion (see Gideon v Wainwright, 372 US 335, 345, 9 L ed 2d 799, 806, 83 S Ct 792; ante, p. 736, and because the Fourteenth Amendment's requirements of fundamental fairness stand as a bulwark against serious local shortcomings in this field. The rule is unwise because the States, with their differing law enforcement problems, should not be put in a constitutional straitjacket and also because the States, more likely than not, will not be placed in an atmosphere of uncertainty since this Court's decisions in the realm of search and seizure are hardly notable for their predictability. Cf Harris v United States, 331 US 145, 175–181, 91 L ed 2d 1399, 1419–1422, 67 S Ct 1098 (Appendix to dissenting opinion of Mr. Justice Frankfurter). (The latter point is indeed forcefully illustrated by the fact that in the first application of its new constitutional rule the majority finds itself equally divided.) And if

Footnotes at end of article.

the Court is prepared to relax Fourth Amendment standards in order to avoid unduly

*[374 US 46]

fettering the States, this would be in *derogation of law enforcement standards in the federal system—unless the Fourth Amendment is to mean one thing for the States and something else for the Federal Government.

I can see no good coming from this constitutional adventure. In judging state searches and seizures I would continue to adhere to established Fourteenth Amendment concepts of fundamental fairness. So judging this case, I concur in the result.

Mr. Justice Brennan, with whom The Chief Justice, Mr. Justice Douglas and Mr. Justice Goldberg join.

I join Part I of Mr. Justice Clark's opinion and the holding therein that "as we said in Mapp . . . the Fourth Amendment 'is enforceable against . . . [the States] by the same sanction of exclusion as is used against the Federal Government,' by the application of the same constitutional standard prohibiting 'unreasonable searches and seizures.'" Only our Brother Harlan dissents from that holding; he would judge state searches and seizures "by the more flexible concept of 'fundamental' fairness, of rights 'basic to a free society,' embraced in the Due Process Clause of the Fourteenth Amendment."

However, Mr. Justice Clark, Mr. Justice Black, Mr. Justice Stewart and Mr. Justice White do not believe that the federal requirement of reasonableness contained in the Fourth Amendment was violated in this case. The Chief Justice, Mr. Justice Douglas, Mr. Justice Goldberg and I have the contrary view. For even on the premise that there was probable cause by federal standards for the arrest of George Ker, the arrests of these petitioners were nevertheless illegal, because the unannounced intrusion of the arresting officers into their apartment violated the

*[374 US 47]

Fourth Amendment. Since the *arrests were illegal, Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, requires the exclusion of the evidence which was the product of the search incident to those arrests.

Even if probable cause exists for the arrest of a person within, the Fourth Amendment is—Headnote 35—violated by an unannounced police instrusion into a private home, with or without an arrest warrant, except (1) where the persons within already know of the officers authority and purpose, or (2) where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted.

[1] Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, did not purport to change the standards by which state searches and seizures were to be judged; rather it held only that the "exclusionary" rule of Weeks v United States, 232 US 383, 58 L ed 652, 34 S Ct 341, LRA1915B 834, was applicable to the States.

I.

It was firmly established long before the adoption of the Bill of Rights that the fundamental liberty of the individual includes protection against unannounced police entries. "[T]he Fourth Amendment did but embody a principle of English liberty, a principle old, yet newly won, that finds another expression in the maxim 'every man's home is his castle.'" Frenkel, Concerning Searches and Seizures, 34 Harv L Rev 361, 365 (1921); Frank v Maryland, 359 US 360, 376–382, 3 L ed 2d 877, 887–891, 79 S Ct 804 (dissenting opinion). As early as Semayne's Case, 5 Co Rep 91a, 91b, 77 Eng Rep 194, 195 (1603), it was declared that "[i]n all cases when the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he cannot enter. *But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors . . .*" (Emphasis supplied.) Over a century later the leading commentators upon the English criminal law affirmed the

*[374 US 48]

continuing vitally of *that principle. 1 Hale, Pleas of the Crown (1736), 583; see also 2 Hawkins, Pleas of the Crown (6th ed 1787), c. 14, § 1; Foster, Crown Law (1762), 320–321.[1] Perhaps its most emphatic confirmation was supplied only 35 years before the ratification of the Bill of Rights. In Curtis' Case, Fost, 135, 168 Eng Rep 67, decided in 1756, the defendant, on trial for the murder of a Crown officer who was attempting an entry to serve an arrest warrant, pleaded that because the officer had failed adequately to announce himself and his mission before breaking the doors, forceful resistance to his entry was justified and the killing was therefore justifiable homicide. In recognizing the defense the court repeated the principle that "peace officers, having a legal warrant to arrest for a breach of the peace, may break open doors, *after having demanded admittance and given due notice of their warrant*"; the court continued that "no precise form of words is required in a case of this kind" because "[i]t is sufficient that the party hath notice, that the officer cometh not as a mere trespasser, but claiming to act under a proper authority . . . ." Fost, at 136–137, 168 Eng Rep., at 68. (Emphasis supplied.) The principle was again confirmed not long after the Fourth Amendment became part of our Constitution. Abbott, C.J., said in Launock v Brown, 2 B & Ald 592, 593–594, 106 Eng Rep 482, 483 (1819):

". . . I am clearly of opinion that, in the case of a misdemeanour, such previous demand is requisite . . . . It is reasonable that the law

*[374 US 49]

should be so; for if no *previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost."[2]

The protections of individual freedom carried into the Fourth Amendment, Boyd v United States, 116 US 616, 630, 29 L ed 746, 751, 6 S Ct 524, undoubtedly included this firmly established requirement of an announcement by police officers of purpose and authority before breaking into an individual's home. The requirement is no mere procedural nicety or formality attendant upon the service of a warrant. Decisions in both the federal and state courts have recognized, as did the English courts, that the requirement is of the essence of the substantive protections which safeguard individual liberty.[3] The Court of Appeals for the District of Columbia Circuit has said: ". . . there is no division of opinion among the learned authors . . . that even where an officer

*[374 US 50]

may *have power to break open a door without a warrant, he cannot lawfully do so unless he first notifies the occupants as to the purpose of his demand for entry." Accarino v. United States, 85 App DC 394, 400, 179 F2d 456, 462.

Similarly, the Supreme Judicial Court of Massachusetts declared in 1852:

"The maxim of law that every man's house is his castle . . . has not the effect to restrain an officer of the law from breaking and entering a dwelling-house for the purpose of serving a criminal process upon the occupant. In such case the house of the party is no sanctuary for him, and the same may be forcibly entered by such officer after a proper notification of the purpose of the entry, and a demand upon the inmates to open the house, and a refusal by them to do so." Barnard v. Bartlett, 64 Mass (10 Cush) 501, 502, 503; cf. State v. Smith, 1 NH 346.

Courts of the frontier States also enforced the requirement. For example, Tennessee's high court recognized that a police officer might break into a home to serve an arrest warrant only "after demand for admittance and notice of his purpose," McCaslin v. McCord, 116 Tenn 690, 708, 94 SW 79, 83; cf. Hawkins v. Commonwealth, 53 Ky (14 B Mon) 395. Indeed, a majority of the States have enacted the requirement in statutes substantially similar to California Penal Code § 844 and the federal statute, 18 USC § 3109.[4]

*[374 US 51]

*Moreover, in addition to carrying forward the protections already afforded by English law, the Framers also meant by the Fourth Amendment to eliminate once and for all the odious practice of searches under general warrants and writs of assistance against which English law had generally left them helpless. The colonial experience under the writs was unmistakably "fresh in the memories of those who achieved our independence and established our form of government." [5] Boyd v. United States, supra (116 US at 625). The problem of entry under a general warrant was not, of course, exactly that of unannounced intrusion to arrest with a warrant or upon probable cause, but the two practices clearly invited common abuses. One of the grounds of James Otis' eloquent indictment of the writs bears repetition here:

"Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is

*[374 US 52]

quiet, he is as well * guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through malice or revenge, no man, no court, can inquire. Bare suspicion without oath is sufficient." Tudor, Life of James Otis (1823), 66–67.

Similar, if not the same, dangers to individual liberty are involved in unannounced intrusions of the police into the homes of citizens. Indeed in two respects such intrusions are even more offensive to the sanctity and privacy of the home. In the first place service of the general warrants and writs of assistance was usually preceded at least by some form of notice or demand for admission. In the second place the writs of assistance by their very terms might be served only during daylight hours.[6] By significant contrast, the unannounced entry of the Ker apartment occurred after dark, and such timing appears to be common police practice, at least in California.[7]

*[374 US 53]

* It is much too late in the day to deny that a lawful entry is as essential to vindication of the protections of the Fourth Amendment as, for example, probable cause to arrest or a search warrant for a search not incidental to an arrest. This—Headnote 36—Court settled in Gouled v. United States, 255 US 298, 305, 306, 65 L. ed. 647, 651, 41 S. Ct.

Footnotes at end of article.

261, that a lawful entry is the indispensable predicate of a reasonable search. We held there that a search would violate the Fourth Amendment if the entry were illegal whether accomplished "by force or by an illegal threat or show of force" or "obtained by stealth instead of by force or coercion." Similarly, rigid restrictions upon unannounced entries are essential if the Fourth Amendment's prohibition against invasion of the security and privacy of the home is to have any meaning.

It is true, of course, that the only decision of this Court which forbids federal officers to arrest and search after an unannounced entry, Miller v. United States, 357 US 301, 2 L ed 2d 1332, 78 S Ct 1190, did not rest upon constitutional doctrine but rather upon an exercise of this Court's supervisory powers. But that disposition in no way implied that the same result was not compelled by the Fourth Amendment.— Headnote 37—Miller is simply an instance of the usual practice of the Court not to decide constitutional questions when a nonconstitutional basis for decision is available. See International Asso. of Machinists v Street, 367 US 740, 749, 750, 6 L ed 2d 1141, 1149, 1150, 81 S Ct 1784. The result there drew upon analogy to a federal statute, similar in its terms to § 844, with which the federal officers concededly had not complied in entering to make an arrest. Nothing we said in Miller so much as intimated that, without such a basis for decision, the Fourth Amendment would not have required the same result. The implication, indeed, is quite to the contrary. For the history adduced in Miller in support of the nonconstitutional ground persuasively demonstrates that the Fourth Amendment's protections include the security of the householder against unannounced invasions by the police.

II.

*[374 US 54]

* The command of the Fourth Amendment reflects the lesson of history that "the breaking an outer door is, in general, so violent, obnoxious and dangerous a proceeding, that it should be adopted only in extreme cases, where an immediate arrest is requisite." 1 Burn, Justice of the Peace (28th ed 1837), 275–276.

I have found no English decision which clearly recognizes any exception to the requirement that the police first give notice of their authority and purposes before forcibly entering a home. Exceptions were early sanctioned in American cases, e. g., Read v. Case, 4 Conn 166, but these were rigidly and narrowly confined to situations not within the reason and spirit of the general requirement. Specifically, exceptional circumstances have been thought to exist only when, as one element, the facts surrounding the particular entry support a finding that those within actually knew or must have known of the officer's presence and purpose to seek admission. Cf. Miller v United States, supra (357 US at 311–313). For example, the earliest exception seems to have been that "[i]n the case of an *escape* after arrest, the officer, on fresh pursuit of the offender to a house in which he takes refuge, may break the doors to recapture him, in the case of felony, without a warrant, and without notice or demand for admission to the house of the offender." [8] Wilgus, Arrest Without

*[374 US 55]

a *Warrant, 22 Mich L Rev 541, 798, 804 (1924). The rationale of such an exception is clear, and serves to underscore the consistency and the purpose of the general requirement of notice: Where such circumstances as an escape and hot pursuit by the arresting officer leave no doubt that the fleeing felon is aware of the officer's presence and purpose, pausing at the threshold to make the ordinarily requisite announcement and demand would be a superfluous act which the law does not require.[9] But no exceptions have heretofore permitted unannounced entries in the absence of such awareness on the part of the occupants—unless possibly where the officers are justified in the belief that someone within is in immediate danger of bodily harm.

Two reasons rooted in the Constitution clearly compel the courts to refuse to recognize exceptions in

*[374 US 56]

other situations * when there is no showing that those within were or had been made aware of the officers' presence. The first is that any exception not requiring a showing of such awareness necessarily implies a rejection of the inviolable presumption of innocence. The excuse for failing to knock or announce the officer's mission where the occupants are oblivious to his presence can only be an almost automatic assumption that the suspect within will resist the officer's attempt to enter peacefully, or will frustrate the arrest by an attempt to escape, or will attempt to destroy whatever possibly incriminating evidence he may have. Such assumptions do obvious violence to the presumption of innocence. Indeed, the violence is compounded by another assumption, also necessarily involved, that a suspect to whom the officer first makes known his presence will further violate the law. It need hardly be said that not every suspect is in fact guilty of the offense of which he is suspected, and that not everyone who is in fact guilty will forcibly resist arrest or attempt to escape or destroy evidence.[10]

*[374 US 57]

*The second reason is that in the absence of a showing of awareness by the occupants of the officers' presence and purpose, "loud noises" or "running" within would amount, ordinarily, at least, only to ambiguous conduct. Our decisions in related contexts have held that ambiguous conduct cannot form the basis for a belief of the officers that an escape or the destruction of evidence is being attempted. Wong Sun v United States, 371 US 471, 483, 484, 9 L ed 2d 441, 452, 453, 83 S Ct 407; Miller v United States, supra (357 US at 311).

Beyond these constitutional considerations, practical hazards of law enforcement militate strongly against any relaxation of the requirement of awareness. First, cases of mistaken identity are surely not novel in the investigation of crime. The possibility is very real that the police may be misinformed as to the name or address of a suspect, or as to other material information. That possibility is itself a good reason for holding a tight rein against judicial approval of unannounced police entries into private homes. Innocent citizens should not suffer the shock, fright or embarrassment attendant upon an unannounced police intrusion.[11]

*[374 US 58]

Second, the requirement * of awareness also serves to minimize the hazards of the officers' dangerous calling. We expressly recognized in Miller v United States, supra (357 US at 313, note 12), that compliance with the federal notice statute "is also a safeguard for the police themselves who might be mistaken for prowlers and be shot down by a fearful householder." [12] Indeed, one of the principal objectives of the English requirement of announcement of authority and purpose was to protect the arresting officers from being shot as trespassers, ". . . for if no previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost." Launock v Brown, 2 B & Ald 592, 594, 106 Eng Rep 482, 483 (1819).

These compelling considerations underly the constitutional barrier against recognition of exceptions not predicated on knowledge or awareness of the officers' presence. State and federal officers have the common obligation to respect this basic constitutional limitation upon their police activities. I reject the contention that the courts, in enforcing such respect on the part of all officers, state or federal, create serious obstacles to effective law enforcement. Federal officers have

*[374 US 59]

operated for five years under * the Miller rule with no discernible impairment of their ability to make effective arrests and obtain important narcotics convictions. Even if it were true that state and city police are generally less experienced or less resourceful than their federal counterparts (and the experience of the very police force involved in this case, under California's general exclusionary rule adopted judicially in 1955, goes very far toward refuting any such suggestion,[13] see Elkins v United States, 364 US 206, 220, 221, 4 L ed 2d 1669, 1679, 80 S Ct 1437), the Fourth Amendment's protections against unlawful search and seizure do not contract or expand depending upon the relative experience and resourcefulness of different groups of law-enforcement officers. When we declared in Mapp that, because the rights of the Fourth Amendment were of no lesser dignity than those of the other liberties of the Bill of Rights absorbed in the Fourteenth, ". . . we can no longer permit . . . [them] to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend [their] . . . enjoyment," 367 US, at 660—I thought by these words we had laid to rest the very problems of constitutional dissonance which I fear the present case so soon revives.[14]

III.

*[374 US 60]

*I turn now to my reasons for believing that the arrests of these petitioners were illegal. My Brother Clark apparently recognizes that the element of the Kers' prior awareness of the officers' presence was essential, or at least highly relevant, to the validity of the officers' unannounced entry into the Ker apartment, for he says, "Ker's furtive conduct in eluding them shortly before the arrest was ground for the belief that he *might well have been* expecting the police." (Emphasis supplied.) But the test under the "fresh pursuit" exception which my Brother Clark apparently seeks to invoke depends not, of course, upon mere conjecture whether those within "might well have been" expecting the police, but upon whether there is evidence which shows that the occupants were in fact aware that the police were about to visit them. That the Kers were wholly oblivious to the officers' presence is the only possible inference on the uncontradicted facts; the "fresh pursuit" exception is therefore clearly unavailable. When the officers let themselves in with the passkey, "proceeding quietly," as my Brother Clark says, George Ker was sitting in his living room reading a newspaper, and his wife was busy in the kitchen. The marijuana, moreover, was in full view on the top of the kitchen sink. More convincing evidence of the complete unawareness of an imminent police visit can hardly be imagined. Indeed, even the conjecture that the Kers "might well have been expecting the police" has no support in the record. That conjecture is made to rest entirely upon the unexplained U-turn made by Ker's car when the officers lost him after the rendezvous at the oil fields. But surely the U-turn must be disregarded as wholly ambiguous conduct; there is absolutely no proof that the driver of the Ker car knew that the

See footnotes at end of table.

*[374 US 61]

officers were *following it. Cf. Miller v United States, supra (357 US at 311); Wong Sun v United States, supra (371 US at 483, 484).

My Brother Clark invokes chiefly, however, the exception allowing an unannounced entry when officers have reason to believe that someone within is attempting to destroy evidence. But the minimal conditions for the application of that exception are not present in this case. On the uncontradicted record, not only were the Kers completely unaware of the officers' presence, but, again on the uncontradicted record, there was absolutely no activity within the apartment to justify the officers in the belief that anyone within was attempting to destroy evidence. Plainly enough, the Kers left the marijuana in full view on top of the sink because they were wholly oblivious that the police were on their trail. My Brother Clark recognizes that there is no evidence whatever of activity in the apartment, and is thus forced to find the requisite support for this element of the exception in the officers' testimony that, in their experience in the investigation of narcotics violations, *other* narcotics suspects had responded to police announcements by attempting to destroy evidence. Clearly such a basis for the exception fails to meet the requirements of the Fourth Amendment; if police experience in pursuing other narcotics suspects justified an unannounced police intrusion into a home the Fourth Amendment would afford no protection at all.

The recognition of exceptions to great principles always creates, of course, the hazard that the exceptions will devour the rule. If mere police experience that some offenders have attempted to destroy contraband justifies unannounced entry in *any* case, and cures the total absence of evidence not only of awareness of the officers' presence but even of such an attempt in the *particular* case, I perceive no logical basis for distinguishing unannounced police entries into homes to make *arrests for *any*

*[374 US 62]

crime involving evidence of a kind which police experience indicates might be quickly destroyed or jettisoned. Moreover, if such experience, without more, completely excuses the failure of arresting officers before entry, at any hour of the day or night, either to announce their purpose at the threshold or to ascertain that the occupant already knows of their presence, then there is likewise no logical ground for distinguishing between the stealthy manner in which the entry in this case was effected, and the more violent manner usually associated with totalitarian police of breaking down the door or smashing the lock.[15]

My Brother Clark correctly states that only when state law "is not violative of the Federal Constitution" may we defer to state law in gauging the validity of an arrest under the

*[374 US 63]

Fourth Amendment. Since the California *law of arrest here called in question patently violates the Fourth Amendment, that law cannot constitutionally provide the basis for affirming these convictions. This is not a case of conflicting testimony pro and con the existence of the elements requisite for finding a basis for the application of the exception. I agree that we should ordinarily be constrained to accept the state fact-finder's resolution of such factual conflicts. Here, however, the facts are uncontradicted: the Kers were completely oblivious of the presence of the officers and were engaged in no activity of any kind indicating that they were attempting to destroy narcotics. Our duty then is only to decide whether the officers' testimony—that in their general experience narcotics suspects destroy evidence when forewarned of the officers' presence—satisfies the constitutional test for application of the exception. Manifestly we should hold that such testimony does not satisfy the constitutional test. The subjective judgment of the police officers cannot constitutionally be a substitute for what has always been considered a necessarily objective inquiry,[16] namely, whether circumstances exist in the *particular* case which allow an unannounced police entry.[17]

*[374 US 64]

*We have no occasion here to decide how many of the situations in which, by the exercise of our supervisory power over the conduct of federal officers, we would exclude evidence, are also situations which would require the exclusion of evidence from state criminal proceedings under the constitutional principles extended to the States by Mapp. But where the conduct effecting an arrest so clearly transgresses those rights guaranteed by the Fourth Amendment as does the conduct which brought about the arrest of these petitioners, we would surely reverse the judgment if this were a federal prosecution involving federal officers. Since our decision in Mapp has made the guarantees of the Fourteenth Amendment coextensive with those of the Fourth we should pronounce precisely the same judgment upon the conduct of these state officers.

FOOTNOTES

[1] Hale's view was representative: "A man, that arrests upon suspicion of felony, may break doors, if the party refuse upon demand to open them . . . ." 1 Hale, Pleas of the Crown (1736), 583. See generally Miller v. United States, 357 US 301, 306–310, 2 L ed 2d 1332, 1336–17338, 78 S Ct 7190; Accarino v. United States, 85 App DC 394, 398–402, 179 F 2d 456, 460–464; Thomas, The Execution of Warrants of Arrest, [1962] Crim L Rev 520, 597, 601–604.

[2] Compare also the statement of Bayley, J., in Burdett v Abbott, 14 East 1, 162–163, 104 Eng Rep 501, 563 (1811):

"Now in every breach of the peace the public are considered as interested, and the execution of process against the offender is the assertion of a public right; and in all such cases, I apprehend that the officer has a right to break open the outer door, provided there is a request of admission first made for the purpose, and a denial of the parties who are within."

See also Ratcliffe v Burton, 3 Bos & Pul 223, 127 Eng Rep 123 (1802); Kerebey v Denby, 1 M & W 336, 150 Eng Rep 463 (1836); cf. Park v Evans, Hob 62, 80 Eng Rep 211; Penton v Brown, 1 Keble 698, 83 Eng Rep 1193; Percival v Stamp, 9 Ex 167, 156 Eng Rep 71 (1853).

[3] See generally Gatewood v United States, 93 App DC 226, 229, 209 F 2d 789, 791; 1 Bishop, New Criminal Procedure (2d ed 1913), § 201; 1 Varon, Searches, Seizures and Immunities (1961), 399–401; Day and Berkman, Search and Seizure and the Exclusionary Rule: A Re-Examination in the Wake of Mapp v Ohio, 13 West Res L Rev 56, 79–80 (1961).

[4] Ala Code, Tit 15 § 155; Ariz Rev Stat Ann § 13–1411; Deering's Cal Penal Code § 844; Fla Stat Ann § 901.19(1); Idaho Code § 19–611; Burns' Ind Ann Stat § 9–1009; Iowa Code Ann § 755.9; Kan Gen Stat § 62–1819; Ky Rev Stat § 70.078; Dart's La Crim Code, Art 72; Mich Stat Ann § 28.880; Minn Stat Ann § 629.34; Miss Code § 2471; Mo Rev Stat § 544.200; Mont Rev Code § 94–6011; Neb Rev Stat § 29–411; Nev Rev Stat § 171.275; McKinney's NY Crim Code § 178; NC Gen Stat § 15–44; Page's Ohio Rev Code Ann § 2935.15; Okla Stat Ann, Tit 22, § 194; Ore Rev Stat § 133.320; SC Code § 53–198; SD Code § 34.1606; Tenn Code Ann § 40–807; Utah Code Ann 77–13–12; Wash Rev Code § 10.31.-040; Wyo Comp Stat § 10–309.

Compare Code of Crim Proc. American Law Institute, Official Draft (1930), § 28:

"*Right of Officer to break into building.* An officer, in order to make an arrest either by virtue of a warrant, or when authorized to make such arrest for a felony without a warrant, as provided in section 21, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance after he has announced his authority and purpose."

[5] See also Henry v. United States, 361 US 98, 100, 101, 4 L ed 2d 134, 137, 138, 80 S Ct 168; Lasson, The History and Development of the Fourth Amendment to the United States Constitution (1937), c. II; Barrett, Personal Rights, Property Rights, and the Fourth Amendment, 1960 Supreme Court Review 46, 70–71; Comment, Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment, 28 U of Chi L Rev 664, 678–679 (1961). Compare East-India Co. v Skinner, Comb 342, 90. Eng Rep 516.

[6] Lasson, The History and Development of the Fourth Amendment to the United States Constitution (1937), 54.

[7] In these two respects, the practice of unannounced police entries by night is also considerably more offensive to the rights protected by the Fourth Amendment than the use of health-inspection and other administrative powers of entry, concerning the constitutionality of which this Court has divided sharply, Frank v Maryland, 359 US 360, 3 L ed 2d 877, 79 S Ct 804, supra; Ohio ex rel. Eaton v Price, 364 US 263, 4 L ed 2d 1708, 80 S Ct 1463. Since my Brother Clark does not rely upon either of those decisions, I have no occasion to discuss further the applicability of either to the case at bar. For further consideration of problems raised by those cases, see generally, Waters, Rights of Entry in Administrative Officers, 27 U of Chi L Rev 79 (1959); Comment, State Health Inspections and "Unreasonable Search": The Frank Exclusion of Civil Searches, 44 Minn L Rev 513 (1960).

[8] It is not clear whether the English law ever recognized such an exception to the requirement of notice or awareness. See, e.g., Genner v Sparks, 6 Mod 173, 87 Eng Rep. 928. It is stated in an English annotator's note to Semayne's Case, supra, that "if a man being legally arrested, escapeth from the officer, and taketh shelter though in his own house, the officer may upon pursuit break open doors in order to retake him, having first given due notice of his business and demanded admission, and been refused." 77 Eng Rep. at 196. The views of other commentators are ambiguous on this point. See e.g., 2 Hawkins, Pleas of the Crown (6th ed 1787), c. 14, § 8. Blackstone's view was that "in case of felony *actually* committed, or a dangerous wounding, whereby felony is like to ensue . . . [a constable] may upon probable suspicion arrest the felon; and for that purpose is authorized (as upon a justice's warrant) to break open doors and even to kill the felon if he cannot otherwise be taken. Commentaries 292.

[9] See Professor Wilgus' comment: "Before doors are broken, there must be a necessity for so doing, and notice of the authority and purpose to make the arrest must be given and a demand and refusal of admission must be made, *unless this is already understood, or the peril would be increased.*" Wilgus Arrest Without a Warrant, 22 Mich L Rev 541, 798, 802 (1924). (Emphasis supplied.) Cf. Accarino v. United States, 85 App DC 394, 398–402, 179 F2d 456, 460–464.

Compare Lord Mansfield's statement, in 1774, of the rationale for the requirement of announcement and demand for admission: "The ground of it is this; that otherwise the consequences would be fatal: for it would leave the family within, naked and exposed to thieves and robbers. It is much better therefore, says the law, that you should wait for another opportunity, than do an act of violence, which may probably be attended with such dangerous conse-

quences." Lee v Gansel, 1 Cowp 1, 6–7, 98 Eng Rep 935, 938.

[10] The comment of Rooke, J., in Ratcliffe v Burton, 3 Bos & Pul 223, 230, 127 Eng Rep 123, 127 (1802), is relevant here: "What a privilege will be allowed to sheriffs' officers if they are permitted to effect their search by violence, without making that demand which possibly will be complied with, and consequently violence be rendered unnecessary!" This view of the requirement of notice or awareness has its parallel in the historic English requirement that an arresting officer must give notice of his authority and purpose to one whom he is about to arrest. In the absence of such notice, unless the person being arrested already knew of the officer's authority and mission, he was justified in resisting by force, and might not be charged with an additional crime if injury to the officer resulted. The origin of this doctrine appears to be Mackalley's Case, 9 Co Rep. 65b, 69a, 77 Eng Rep 828, 835. See also Rex v George, [1935] 2 DLR 516 (BC Ct App); Regina v Beaudette, 118 Can Crim Cases 295 (Ont Ct App). Compare, e.g., People v Potter, 144 Cal App 2d 350, 300 P2d 889, in which noncompliance with § 844 was excused because the defendant was known to have been convicted of three previous robberies and was suspected of a fourth—though in fact, upon entering his hotel room unannounced and by means of a key obtained from the manager, the officer found the defendant in bed, with the lights off, and unarmed. The entry occurred after midnight.

[11] The importance of this consideration was aptly expressed long ago by Health, J., in Ratcliffe v Burton, 3 Bos & Pul 223, 230, 127 Eng Rep 123, 126–127 (1802):

"The law of England, which is founded on reason, never authorises such outrageous acts as the breaking open every door and lock in a man's house without any declaration of the authority under which it is done. Such conduct must tend to create fear and dismay, and breaches of the peace by provoking resistance. This doctrine would not only be attended with great mischief to the persons against whom process is issued, but to other persons also, since it must equally hold good in cases of process upon escape, where the party has taken refuge in the house of a stranger. Shall it be said that in such case the officer may break open the outer door of a stranger's house without declaring the authority under which he acts, or making any demand of admittance? No entry from the books of pleading has been cited in support of this justification, and Semayne's case is a direct authority against it."

[12] See also McDonald v United States, 335 US 451, 460, 461, 93 L ed 153, 160, 161, 69 S Ct 191 (concurring opinion) for Mr. Justice Jackson's comment: "Many homeowners in this crime-beset city doubtless are armed. When a woman sees a strange man, in plain clothes, prying up her bedroom window and climbing in, her natural impulse would be to shoot."

[13] See, e.g., Kamisar, Public Safety v Individual Liberties: Some "Facts" and "Theories," 53 J Crim L, Criminology and Police Science 171, 188–190 (1962); Rogge, Book Review, 76 Harv L Rev 1516, 1522–1523 (1963).

[14] Compare Justice Traynor's recent comment:

"Nevertheless the United States Supreme Court still confronts a special new responsibility of its own. Sooner or later it must establish ground rules of unreasonableness to counter whatever local pressures there might be to spare the evidence that would spoil the exclusionary rule. Its responsibility thus to exercise a restraining influence looms as a heavy one. It is no mean task to formulate far-sighted constitutional standards of what is unreasonable that lend themselves readily to nation-wide application." Traynor, Mapp v Ohio at Large in the Fifty States, 1962 Duke LJ 319, 328.

[15] The problems raised by this case are certainly not novel in the history of law enforcement. One of the very earliest cases in this field, decided more than three centuries ago, involved facts strikingly similar to those of the instant case. The case of Waterhouse v. Saltmarsh, Hob 263, 80 Eng Rep 409, arose out of the service by a sheriff and several bailiff's of execution upon a bankrupt. These officers, having entered the outer door of the house by means not described, "ran up to the chamber, where the plaintiff and his wife were in bed and the doors lockt, and knocking a little, without telling what they were, or wherefore they came, brake open the door and took him . . . ." The sheriff was fined the substantial sum of £200—for what the court later described in a collateral proceeding as "the unnecessary outrage and terror of this arrest, and for not signifying that he was sheriff, that the door might have been opened without violence . . ." Hob, at 264, 80 Eng Rep, at 409. Compare another early case involving similar problems, Park v. Evans, Hob 62, 80 Eng Rep 211, in which the Star Chamber held unlawful an entry effected by force after the entering officers had knocked but failed to identify their authority or purpose. The Star Chamber concluded that "the opening of the door was occasioned by them by craft, and then used to the violence, which they intended."

[16] Any doubt concerning the scope of the California test which may have survived People v. Maddox, 46 Cal 2d 301, 294 P2d 6, must have been removed by the later case of People v. Hammond, 54 Cal 2d 846, 854, 855, 9 Cal Rptr 233, 357 P2d 289, 294:

"When there is reasonable cause to make an arrest, and the facts known to the arresting officer before his entry are not inconsistent with a good faith belief on his part that compliance with the formal requirements of . . . . section (844) is excused, a failure to comply therewith does not invalidate the search and seizure made as an incident to the ensuing arrest."

[17] I think it is unfortunate that this Court accepts the judgment of the intermediate California appellate court on a crucial question of California law—for it is by no means certain that the Supreme Court of California, the final arbiter of questions of California law, would have condoned the willingness of the District Court of Appeal to excuse noncompliance with the California statute under the facts of this case. For the view of the California Supreme Court on the scope of the exception under § 844, see e.g., People v. Martin, 45 Cal. 2d 755, 290 P2d 855; People v. Carswell, 51 Cal 2d 602, 335 P2d 99; People v. Hammond, 54 Cal 2d 846, 9 Cal Rptr 233, 357 P2d 289.

An examination of the California decisions which have excused noncompliance with § 844 reveals the narrow scope of the exceptions heretofore recognized—confined for the most part to cases in which officers entered in response to cries of a victim apparently in imminent danger, e.g., People v. Roberts, 47 Cal 2d 374, 303 P2d 721; or in which they first knocked at the door, or knew they had been seen at the door, and then actually heard or observed destruction of evidence of the very crime for which they had come to arrest the occupants, see e.g., People v. Moore, 140 Cal App 2d 870, 295 P2d 969; People v. Steinberg, 148 Cal App 2d 855, 307 P2d 634; People v. Williams, 175 Cal App 2d 774, 1 Cal Rptr 44; People v. Fisher, 184 Cal App 2d 308, 7 Cal Rptr 461. See generally, for summary and discussion of California cases involving various grounds for noncompliance with § 844, Fricke, California Criminal Evidence (5th ed 1960), 432–433; Comment, Two Years With the Cahan Rule, 9 Stan L Rev 515, 528–529 (1957).

Mr. DODD. Mr. President, I will take just a few minutes. I do not want to detain the Senate, but it bothers me that the RECORD might not be clear for those who have not been here during all of the discussion. It bothers me also that the great Senator from North Carolina is troubled, as he is.

I suggest to him most respectfully that the trouble is he does not realize that in this age and time in law enforcement work we have devices and techniques never dreamed of at the time our Constitution was written. We have chemical analysis, electronic devices, and other things in the field of narcotics and they are authorized in these cases. We know by common experience that these rogues can easily dispose of evidence we must have. That is the danger.

Mr. President, I hope the Senate will reject the amendment offered by the Senator from North Carolina.

Mr. NELSON. Mr. President, on January 28, 1970, I joined with my Senate colleagues in unanimously approving S. 3246, the Controlled Dangerous Substances Act, better known as the Drug Control Act. While recognizing the necessity for a coordinated and unified Federal approach to the serious national problem of narcotics and dangerous drug control, I expressed grave reservations in January about one section of this legislation—the authorization for "no knock" entries which would allow law enforcement officers to enter premises without notice. Before voting for final passage of that bill, I cast my dissent against inclusion of "no knock" authority in three separate rollcall votes.

At the time of the Senate debate on the Drug Control Act in January, it was my conviction that whatever "no knock" authority may be permissible under the Constitution should be settled by the courts on a case by case basis rather than codified by statute which would, I think, be subject to serious administrative abuse.

"No knock" authority was included in the District of Columbia crime bill that was before the Senate this July. Although grave doubts were expressed by many over the wisdom and the justice of including "no knock" in the District of Columbia crime bill, there was apparently the feeling that it would be too difficult to explain this opposition to constituents. Furthermore, there was no necessity for an explanation since the reach of the District of Columbia crime bill would not touch home. My vote against "no knock" for District of Columbia was in the minority.

There are, however, some important distinctions between the issue before the Senate today and the issue that the Senate faced in July with the D.C. crime bill. First of all, this authority will not be restricted to an isolated unrepresented jurisdiction but will pervade every State in this Union. Second, it will not be necessary to vote against an entire bill in order to oppose this provision. There is no conference report that could be totally frustrated as was the argument on the D.C. crime bill. There is instead a simple and direct amendment which will delete this "no-knock" authority in this legislation on a national level and preserve the valid and necessary provisions of a much needed bill.

So the issue is rather direct and straightforward.

The issue is not whether to do something about drug abuse and law enforcement. Nor is the issue one of coddling criminals. The issue is how to guarantee strong law enforcement actions consistent with the constitutional guarantees of all citizens.

The fourth amendment of the Constitution guarantees the right of people in this country "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." There is no more important right secured by our Constitution and valued by our society.

The case against "no-knock" was eloquently stated by William Pitt in debate in the House of Lords:

The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail. Its roof may shake. The wind may blow through it. The storm may enter. The rain may enter. But the King of England cannot enter. All his force dares not cross the threshold of that ruined tenement.

William Pitt's statement was made 204 years ago. Today the issue is the same. There is a need to reaffirm the validity of his statement and the freedom from repressive and arbitrary governmental action. For this reason, I will again vote against "no-knock" authority. At the same time I will give my support to the other provisions of this bill and work to strengthen title I so as to provide for a balanced and coordinated attack upon drug and narcotics abuse that itself does not abuse constitutional prerogatives.

Mr. President, at this point I ask unanimous consent that an editorial from the Milwaukee Journal entitled "Good, Bad of Drug Bill" be printed at this place in the RECORD.

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

GOOD, BAD OF DRUG BILL

President Nixon's general approach to crime blends some sound proposals with quite a few disquieting ideas. This is reflected anew in the drug abuse bill that has passed the House with administration blessing. A similar bill cleared the Senate in January.

On the plus side, the bill brings a touch of reason to the harsh way we criminalize drug abuse. It would make first-offense possession of an illicit drug a misdemeanor instead of a felony and the offender could wipe his record clean if he satisfactorily completed a probation period. This could reduce the way so many young people, arrested only once for drug use, run the risk of a lifelong felon record. At the same time, penalties for drug peddlers would be stiffened.

The bill would commendably increase spending on rehabilitation, research and education programs—a further indication that the government is now willing to treat drug abuse as more of a medical than a criminal problem. The bill also would create a special study commission on marijuana and other drugs. The marijuana study, due within a year, would address the question of legalizing pot, currently tangled in conflicting claims as to the drug's harmfulness. This seems badly needed.

Other features of the bill, however, are disturbing. One would authorize "no-knock" raids by narcotic agents. After obtaining a warrant from a judge, agents could without warning break into a home or office in search of evidence. This raises a chilling challenge to the concept of privacy as well as the prospect of shootouts between police and startled householders.

The bill also has several alarming sentencing provisions. The 10 year mandatory minimum for drug peddlers involved with five or more persons in distributing narcotics is a needless hamstringing of judicial discretion. At the same time, the bill swings wildly in the other direction by permitting a judge to impose an additional sentence (up to a total of 25 years) if he deems a defendant a professional criminal. It could be done on the basis of evidence that the defendant was unable to contest, and even if a jury had found him guilty of a violation carrying a far lesser penalty. This appears to be a serious abridgement of constitutional rights.

It is to be hoped that the House-Senate conference committee, summoned to reconcile the two versions of the bill, will withdraw bad features while retaining the good. But given the clamor for "law and order" in an election year, the chance of balanced judgment seems slender.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks announced that the House had agreed to the concurrent resolutions (S. Con. Res. 81) authorizing the printing of additional copies of Senate hearings on Copyright Law Revision (S. 597, 90th Congress).

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 6114. An act for the relief of Elmer M. Grade;

H.R. 9087. An act to authorize the Secretary of the Interior to convey certain mineral interests of the United States in certain lands located in Wagoner County, Okla., to I. Earl Nutter;

H.R. 10233. An act for the relief of Commander Albert G. Berry, Junior;

H.R. 13806. An act for the relief of Irwin Katz;

H.R. 14543. An act for the relief of Mrs. Rolando C. Dayao;

H.R. 15767. An act for the relief of Mrs. Maria Zahaniacz (nee Bojkiwska);

H.R. 15770. An act to provide for conserving surface waters; to preserve and improve habitat for migratory waterfowl and other wildlife resources; to reduce runoff, soil and wind erosion, and contribute to flood control; and for other purposes;

H.R. 15922. An act for the relief of Somporn (Leeta Noi) Bell;

H.R. 16502. An act for the relief of Gary W. Stewart;

H.R. 16857. An act for the relief of Soon Ho Yoo;

H.R. 17272. An act for the relief of certain employees of the Department of Defense;

H.R. 17431. An act for the relief of Jacqueline and Barbara Andrews;

H.R. 17508. An act for the relief of Jung Yung Mi and Jung Ae Ri; and

H.R. 17912. An act for the relief of Jin Soo Park and Moon Mi Park.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (H.R. 2043) for the relief of Keum Ja Franks, and it was signed by the President pro tempore.

HOUSE BILLS REFERRED

The following bills were severally read twice by their title and referred, as indicated:

H.R. 6114. An act for the relief of Elmer M. Grade;

H.R. 10233. An act for the relief of Comd. Albert G. Berry, Jr.;

H.R. 13806. An act for the relief of Irwin Katz;

H.R. 14543. An act for the relief of Mrs. Rolando C. Dayao;

H.R. 15767. An act for the relief of Mrs. Maria Zahaniacz (nee Bojkiwska);

H.R. 15922. An act for the relief of Somporn (Leeta Noi) Bell;

H.R. 16502. An act for the relief of Gary W. Stewart;

H.R. 16857. An act for the relief of Soon Ho Yoo;

H.R. 17272. An act for the relief of certain employees of the Department of Defense;

H.R. 17431. An act for the relief of Jacqueline and Barbara Andrews;

H.R. 17508. An act for the relief of Jung Yung Mi and Jung Ae Ri; and

H.R. 17912. An act for the relief of Jin Soo Park and Moon Mi Park; to the Committee on the Judiciary.

H.R. 9087. An act to authorize the Secretary of the Interior to convey certain mineral interests of the United States in certain lands located in Wagoner County, Okla., to I. Earl Nutter; to the Committee on Interior and Insular Affairs.

H.R. 15770. An act to provide for conserving surface waters; to preserve and improve habitat for migratory waterfowl and other wildlife resources; to reduce runoff, soil and wind erosion, and contribute to flood control; and for other purposes; to the Committee on Commerce.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the vote on the amendment offered by the able Senator from North Carolina occur not later than 7:15 p.m. today.

The PRESIDING OFFICER. Is there objection?

Mr. EAGLETON. Mr. President, reserving the right to object, would that preclude me from offering an amendment during the intervening period? We could agree to a vote on my amendment to accommodate the desires of all.

Mr. BYRD of West Virginia. It would not prevent it by unanimous consent, if that could be arranged. How long would the Senator want on his amendment?

Mr. EAGLETON. I think 15 or 20 minutes as an absolute maximum on my side, and I suspect even less than that on the other side, which added together would put the time at 7:15 p.m., and the votes, if possible, could occur back to back.

Mr. BYRD of West Virginia. Does the Senator intend to have a rollcall vote on his amendment?

Mr. EAGLETON. That was my expectation, yes.

Mr. BYRD of West Virginia. My purpose in asking that the vote on the amendment of the Senator from North Carolina be delayed was that we might proceed to lay the pending business aside temporarily and take up the Sleeping Bear Dunes bill, dispose of it, and then come back to the drug control bill.

We have some Senators on both sides who are presently at the White House. We are trying to protect them.

Mr. EAGLETON. I understand. If I could respond to the Senator from West Virginia, the interval between now and 7:15 is ample time, if not more than ample time, to dispose of the debate on my

amendment, which will require a roll call vote. Then we would be continuing on the instant subject matter, the drug abuse control bill.

Mr. BYRD of West Virginia. Mr. President, I make the following unanimous-consent request: I ask unanimous consent that time on the amendment to be offered by the able Senator from Missouri (Mr. EAGLETON) be limited to 20 minutes, the time to be equally divided.

Mr. EAGLETON. Could we make it 30 minutes, 15 minutes on a side?

Mr. BYRD of West Virginia. Mr. President, I will change the request to 30 minutes, the time to be equally divided between the mover of the amendment and the manager of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. HRUSKA. Mr. President, reserving the right to object, what is the nature of the amendment?

Mr. DODD. It reduces the classification of amphetamines from classification 3 to classification 2.

Mr. EAGLETON. I think, more correctly, it would increase the elevation; elevate it.

Mr. DODD. I am sorry.

Mr. HRUSKA. Mr. President, this is a very important and serious change. It changes the entire administrative procedures in the bill. I wonder if we should do it for amphetamines. I know reasons why it should not be done. I do not think 10 minutes would be sufficient time to debate it. This amendment is not simple. The reasons are not simple. I doubt if 10 minutes would be enough.

Mr. BYRD of West Virginia. Does the Senator object?

Mr. HRUSKA. If the request is renewed, I do, for the time being, object.

Mr. BYRD of West Virginia. Mr. President, I withdraw the request. I present the following unanimous-consent request:

I ask unanimous consent that the pending business be temporarily laid aside and that the Senate proceed to the consideration of Calendar No. 1281, H.R. 18766, the so-called Sleeping Bear Dunes bill; that time on any amendment to that bill be limited to 20 minutes, the time to be equally divided between the author of the amendment and the manager of the bill; and that a vote on the amendment which is to be offered by the able Senator from Michigan (Mr. GRIFFIN) be voted on no later than 7 p.m. today; that a vote on the Sleeping Bear Dunes bill follow immediately after the vote on Mr. GRIFFIN'S amendment; and that the Senate then return to the consideration of the drug bill, with a vote to occur on the amendment that has been offered by the able Senator from North Carolina (Mr. ERVIN) immediately; and that following the vote on that amendment, the Senator from Missouri (Mr. EAGLETON) be recognized to offer his amendment.

Mr. DODD. Mr. President, will the Senator yield to me before we take action on that request?

Mr. BYRD of West Virginia. I yield.

Mr. DODD. I ask the attention of the Senator from Nebraska. I think this amendment has great merit. Perhaps the Senator does not agree. But, as I understand it—and I misstated it, but I did know—what the Senator from Missouri is trying to do is toughen up, tighten up, the law with respect to amphetamines. I do not think it is excessive. I wonder if the Senator from Nebraska would not agree.

Mr. HRUSKA. Mr. President, I would oppose the amendment for reasons which I believe are very sound and valid, and I do not know that 10 minutes is enough time to do it.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request proposed by the Senator from West Virginia?

Mr. BYRD of West Virginia. Mr. President, let me restate that request so that it will be understood by all.

I ask unanimous consent that the pending business be temporarily laid aside and that the Senate proceed to the consideration of Calendar Order No. 1281, the Sleeping Bear Dunes bill; and the time on the amendment to be offered by the Senator from Michigan (Mr. GRIFFIN) be limited to not to exceed 25 minutes—I assume that he will immediately lay down his amendment—and that a vote on that amendment occur at the expiration of the 25 minutes, which would be circa 7 o'clock tonight; that the vote on the bill occur immediately after the vote on the amendment offered by the Senator from Michigan (Mr. GRIFFIN); and that a vote on the Ervin amendment then occur.

Mr. BIBLE. Mr. President, reserving the right to object—and I shall not object—are the 25 minutes to be divided equally?

Mr. BYRD of West Virginia. Yes.

Mr. HRUSKA. Mr. President, reserving the right to object, is there assurance that there are no further amendments?

Mr. BYRD of West Virginia. That is my understanding.

Mr. BIBLE. The Senator is talking about the Sleeping Bear Dunes bill?

Mr. HRUSKA. No; the other bill; the drug bill.

Mr. BYRD of West Virginia. No; I am not so assured on that bill.

Mr. HRUSKA. I thought the Senator was referring to the drug bill when he talked about voting on the amendment of the Senator from North Carolina.

Mr. BYRD of West Virginia. Yes; we would come back to that bill after disposition of the Sleeping Bear Dunes bill.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD of West Virginia. Mr. President, let me rephrase the request, so there will be no misunderstanding.

I ask unanimous consent that the pending drug bill be temporarily laid aside; that the Senate immediately proceed to the consideration of Calendar Order No. 1281, the Sleeping Bear Dunes National Lakeshore bill; that the time on any amendment to that bill be limited to not more than 25 minutes, the time to be equally divided between the mover of the amendment and the manager of the bill; and that immediately following the expiration of the 25 minutes on the amendment to be offered by the Senator from Michigan (Mr. GRIFFIN) there be a vote on that amendment; and that the vote on the bill, Calendar Order No. 1281, occur immediately; and that following the vote on the bill, the vote on the amendment to the drug bill offered by the Senator from North Carolina, the yeas and nays having already been ordered, immediately occur; and that following the vote on the amendment by the able Senator from North Carolina (Mr. ERVIN), the able Senator from Missouri (Mr. EAGLETON) be recognized for the purpose of offering his amendment to the drug bill.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. CHURCH). The Chair would like to make an announcement.

The Chair, on behalf of the Vice President, pursuant to Public Law 84–689, appoints the following Senators as delegates to the North Atlantic Assembly, The Hague, Netherlands, November 6–11, 1970:

John Sparkman (Chairman), Henry M. Jackson, Harrison A. Williams, Jr., Thomas J. McIntyre, Birch Bayh.

Edward M. Kennedy, Gaylord Nelson, Joseph D. Tydings, Ernest F. Hollings, William B. Spong, Jr., Thomas F. Eagleton.

Clifford P. Case, John Sherman Cooper, Jacob K. Javits, Charles H. Percy.

Robert P. Griffin, Marlow W. Cook, Ted Stevens, Charles McC. Mathias, William B. Saxbe, Richard S. Schweiker.

SLEEPING BEAR DUNES NATIONAL LAKESHORE

By unanimous consent the Senate proceeded to consider the bill (H.R. 18776) to establish in the State of Michigan the Sleeping Bear Dunes National Lakeshore, and for other purposes.

Mr. BIBLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is Calendar No. 1281, H.R. 18776, pursuant to the unanimous-consent order, and the Senator from Nevada is recognized.

The clerk will first state the bill by title.

The assistant legislative clerk read the bill by title, as follows:

H.R. 18776, to establish in the State of Michigan the Sleeping Bear Dunes National Lakeshore, and for other purposes.

Mr. BIBLE. Mr. President, this bill will authorize the establishment of the Sleeping Bear Dunes National Lakeshore in the State of Michigan. The National Lakeshore will be a unit of our national park system, established and administered to preserve the natural features of the area and to insure that the public may benefit from and enjoy the area.

The Sleeping Bear Dunes National Lakeshore will encompass 71,068 acres of land and water. The main area, some 40,000 acres, is located along the Lake Michigan coast west of Traverse City,

Mich. The Chicago and Detroit metropolitan areas are some 250 to 300 miles to the south, within easy access to this area. In addition to the mainland unit, the lakeshore will include all of two nearby islands: 5,300-acre South Manitou Island and 14,000-acre North Manitou Island. In all, some 65 miles of Lake Michigan shoreline will be involved, and I need not emphasize how rapidly we are losing public access to such shoreline areas.

There is no dispute about the great natural values and indeed, national significance of the Sleeping Bear Dunes area. The dunes themselves form one of the Nation's outstanding displays of this natural phenomenon. Here are high headlands, whipped by strong winds off the lake which create ever-changing patterns. The interaction of the shifting sands with various forms of vegetation is itself a fascinating study. The dunes, the headlands and the basic structure of this area are easily recognizable and interesting artifacts of the last ice age. Here the evidence of glacial landforms is clear, offering an outstanding opportunity for interpretation to the public of the lessons of geology, natural history, and ecology.

It is not simply the dunes themselves that call our special attention to this area, for the dunes are set within a magnificent and diverse landscape of high wooded hills, vast sandy plains along the sweeping bays of Lake Michigan, and sparkling inland lakes. The Manitou Islands offer an unusual opportunity for varied recreational experiences, and they have their own special natural features which are of great interest.

This is, Mr. President, a truly outstanding area, one offering a fine opportunity for the kind of preservation policy and recreational opportunities which our National Park System has been developed to assure. I have been impressed in my own visit to the area with the very great potential we have here to secure for the American people a superb sample of the Great Lakes environment and landscape, and I know that this will be a great legacy for future generations.

Our action on this proposal is not coming any too soon. This is a superb area, as I have pointed out. For that very reason, it is severely endangered. While long-established residents have worked to maintain its natural values, the pressures of population and private recreational subdivision and development are growing mightily. Such pressures focus first on just this kind of really outstanding area. As a result, we are seeing piecemeal development encroaching on this area at an accelerating pace. Indeed, even as we work on this proposal, development is moving forward. We have a real obligation to proceed now to implement this proposal, if we are to secure this area in its full values for public enjoyment and benefit.

Now, this is not like setting up a park area on undeveloped land. There are homes and communities in this area. This is a problem we have dealt with more and more frequently in our Subcommittee on Parks and Recreation as the Nation has moved to bring recreational and natural areas within reach of the populous centers of our country. It is not an easy task, because we must find a fair and effective balance between the public interest and the rights and interests of local residents, property owners and communities. It is always a difficult problem, but I know of no proposal in recent years in which a greater or more persistent effort has been made to find this balance in an effective way. As a result, this legislation contains greater safeguards for existing local interests than any we have previously brought to the floor. I think it is an excellent bill in this regard and I point to the broad support the proposal now has in Michigan as evidence of the effectiveness of this effort.

Mr. President, this is not a new proposal to the Senate. Legislation for this area was first introduced in the Senate in the late 1950's, when a preliminary survey of the Great Lakes shoreline revealed this area to be one of the most worthy of national status and most needing sound protection. More detailed studies by the National Park service resulted in a detailed National Lakeshore plan, and legislation to implement that was introduced in 1961 by the distinguished senior Senator from Michigan and our late colleague, Pat McNamara.

Hearings have been conducted in the local area and in Washington through the intervening years. In 1963 the Senate passed the proposal, but no action followed in the other body. Again in 1965 we cleared the bill, and the following year the House Committee on Interior and Insular Affairs did report the Senate bill favorably, adding some important lands as a result of suggestions by the distinguished junior Senator from Michigan. Unfortunately, that bill did not receive a rule in time for floor action in the other body before the close of the 89th Congress.

In returning to this proposal, we have awaited action first from the other body. I am pleased to say that we now have the House-passed bill before us. Indeed, as reported by our Committee on Interior and Insular Affairs, H.R. 18776 is identical with the Sleeping Bear Dunes National Lakeshore bill passed by the House on September 22, with the support of the Michigan delegation.

This is significant progress inasmuch as this proposal has been, in the past, a subject of much controversy. We have gone into the matter thoroughly in hearings before our Subcommittee on Parks and Recreation, focusing particularly on the changes in the new bill from the bill we last approved here in 1965. There are a number of these changes, all of which we found to be most desirable and helpful, and I will highlight those here:

First, the present bill has enlarged the boundaries to include three additional tracts of land, all of which are highly qualified and desirable additions to round out the National Lakeshore area. Thus, the total land acreage in the bill now before the Senate is 60,748, an increase of 14,645 acres over the bill we passed in 1965. Section 2(b) of the bill has also been altered to specify that the State of Michigan may retain control of up to 300 acres of lands in the Platte Bay section for management in connection with its Coho salmon fisheries program. Otherwise, as is our usual practice, the State of Michigan will be required to donate its State-owned lands within the area to the Federal Government as a precondition to the formal establishment of the National Lakeshore. The State has expressed its intention to cooperate fully in this project.

Second, the bill includes the necessary updating of cost authorizations, which are set now at $19,800,000 for land acquisition and $18,769,000 for development. These are up-to-date estimates and can be maintained if the National Lakeshore is implemented in a timely way. I would add that this bill is approved as a part of the President's program and the Department of the Interior reported favorably on the exact version now before the Senate. The administration assures us that it has programed the expenditures involved for a 4-year period under the available resources of the augmented land and water conservation fund.

Third, the bill now contains a new section 3 which prescribes a mechanism by which lands are to be classified for varying land acquisition policies and limitations. The purpose here—and this is not any departure from standard Park Service procedures—is to end the uncertainty of individual property owners as to their long-term status under the proposal and to do this as promptly as possible. That is only fair.

Fourth, the bill now contains a provision requiring a study of areas within the National Lakeshore which may be suitable for special designation under the terms of the 1964 Wilderness Act.

Fifth, the first section of the bill has been rephrased to state more precisely the intent of Congress as regards the purpose of the legislation. This rephrasing makes clear that the "maximum protection of the natural environment within the area" is the primary objective, and that provision of public recreational opportunities is to be consistent with that priority. There is no necessary inconsistency between preservation and appropriate recreation as goals, so long as this fundamental priority for the long term is recognized and followed.

Mr. President, this is an excellent and very carefully drawn bill. I believe it goes to the points of concern which have been expressed over these years by local people and meets those concerns in a way which will work to the benefit of all. It will bring into our National Park Service a really remarkable area of great potential, and by doing so it will assure that this potential is maintained and wisely managed for long-term benefits. I urge that H.R. 18776 be approved, without amendment.

Mr. President, I reserve the remainder of my time.

Mr. GRIFFIN. Mr. President, I send to the desk an amendment in the nature of a substiute, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BIBLE. I ask unanimous consent that further reading of the amendment

be dispensed with, and that the amendment be printed in the RECORD.

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

Mr. GRIFFIN's amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That in order to preserve for the benefit, inspiration, and recreational use of the public a significant portion of the shoreline of Lake Michigan that remains undeveloped, the Secretary of the Interior (hereinafter referred to as "the Secretary") is authorized to take appropriate action, as herein provided, to establish in the State of Michigan the Sleeping Bear Dunes National Park (hereinafter referred to as "the park").

SEC. 2. The Sleeping Bear Dunes National Park area shall include the Sleeping Dunes, the D. H. Day State Park, the Benzie State Park, North Manitou Island, South Manitou Island, together with certain land and water lying between Lake Michigan and State Highways M–109 and M–22, which park area is more particularly described hereafter in section 11.

SEC. 3. (a) The Secretary shall not be authorized to acquire by condemnation any improved property (as hereinafter defined in section 4) except that the Secretary shall be authorized to acquire by condemnation, if necessary, with payment of just compensation, the following limited interests in improved property: (1) a scenic easement (in the nature of a covenant running with the land) which requires the owner thereof to maintain the character and condition of such property and to use such property only for the purposes for which it was being used on December 31, 1968; and (2) an option (in the nature of a covenant running with the land) providing that before the owner sells any right, title, or interest in or to any of such property to another purchaser, the United States shall have a prior right to purchase such right, title, or interest at a price equal to that offered in good faith by any other prospective purchaser.

(b) Except as otherwise provided in paragraph (a) of this section, the Secretary is authorized to acquire by purchase, gift, condemnation, transfer from another Federal agency, exchange, or otherwise, any real property or interest therein within the boundaries of the park area as described in section 11 of this Act.

(c) Any real property or interest therein owned by the State of Michigan or any political subdivision thereof may be acquired under this Act only with the concurrence of such owner. Notwithstanding any other provision of law, any Federal property located within such area may, with the concurrence of the Federal agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the provisions of this Act.

SEC. 4. (a) As used in this Act, the term "improved property" means a detached building which is used as a dwelling, or is used for a commercial purpose that is compatible with, and does not impair the usefulness or attractiveness of, the park, construction of which building was begun before December 31, 1968; and such improved property shall include so much of the land on which such building is situated (such land being in the same ownership as the building) as the Secretary shall designate to be reasonably necessary for the continued use and enjoyment of such building, together with any structures accessory to the same which may be situated on the lands so designated. In every such case, the amount of land so designated shall be at least three acres in area, or all of such lesser acreage as may be held in the same ownership as such building. In making such designation the Secretary shall take into account the manner of use in which the building and land have customarily been enjoyed.

(b) Within ninety days after a written request therefor is made to the Secretary by the owner of any commercial property, the Secretary shall furnish to such owner a certificate indicating whether, and under what conditions, if any, such commercial property is deemed to be "improved property" within the meaning of this Act. If the owner is not satisfied with the Secretary's determination, as evidenced by such certificate, then the owner may institute a proceeding in the Federal district court, within whose jurisdiction the property is situated, for the purpose of amending or setting aside such certificate.

SEC. 5. (a) Any property, or interest therein, acquired by the Secretary under this Act (other than by gift, transfer, or exchange) shall be acquired at not less than its fair market value.

(b) With respect to any property, or interest therein, which the Secretary is authorized under this Act to acquire by condemnation, no condemnation proceeding shall be instituted unless the Secretary shall have notified the owner of such property of his intention to acquire such property by condemnation. If within sixty days from such notice the owner of the property shall so request, the United States district court, within whose jurisdiction such property is situated, shall appoint three qualified persons who shall make an independent appraisal to determine the fair market value of such property and report such amount to the parties concerned and to the court. All costs of such appraisal shall be borne by the United States. Thereafter, if the owner and the Secretary are unable to agree on a purchase price for such property, the Secretary may institute proceedings for its condemnation.

SEC. 6. (a) As soon as funds are available the Secretary shall proceed expeditiously to acquire all property, other than improved property, which he is authorized by this Act to acquire.

(b) If, and at such time, as the owner of improved property may offer such property for sale to the United States, the Secretary shall give immediate and careful consideration to such offer and the Secretary shall purchase such property if offered for a price which does not exceed its fair market value. In the event the owner and the Secretary cannot agree as to the fair market value, then, if the owner so requests, the United States district court, within whose jurisdiction such property is located, shall appoint three qualified persons who shall make an independent appraisal to determine the fair market value of such property and report such amount to the parties concerned and to the court. All costs of such appraisal shall be borne by the property owner.

SEC. 7. The United States shall make payments to local subdivisions of State government (including school districts) in lieu of real property taxes upon property which was subject to local taxation before acquisition under authority of this Act. Such payments shall be equal to the amount of taxes, and shall be paid at such times, as would be required if title to such real property were held by a private citizen. Such payments in lieu of taxes shall not exceed the amount of taxes payable for debt retirement purposes which would have been assessed if such property had remained in the same condition as when acquired by the Secretary. This section shall not authorize payment by the United States of any amount in lieu of taxes after any and all bonded indebtedness which may have been incurred by such local subdivision prior to the effective date of this Act shall have been paid in full.

SEC. 8. In administering the park the Secretary shall permit hunting and fishing on lands and waters under his jurisdiction in accordance with the laws of the State of Michigan: *Provided, however,* That the Secretary, with the approval of the Michigan Department of Conservation, may designate zones and establish periods where and when no hunting shall be permitted for reasons of public safety, administration, or public use and enjoyment. The Secretary may, after consultation with such department, issue such regulations, consistent with this section, as may be necessary to carry out the purposes of this Act.

SEC. 9. (a) There is hereby established a Sleeping Bear Dunes National Park Advisory Commission (hereinafter referred to as the "commission").

(b) The commission shall be composed of ten members, each appointed for a term of four years, as follows:

(1) Two members to be appointed by the Board of Supervisors of Benzie County and two members to be appointed by the Board of Supervisors of Leelanau County;

(2) Four members to be appointed by the Governor of the State of Michigan, at least two of whom shall be members of the Michigan State Conservation Commission; and

(3) Two members to be appointed by the Secretary.

(c) The commission by majority vote shall designate one member to be chairman. Any vacancy in the commission shall be filled in the same manner in which the original appointment was made.

(d) A member of the commission shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the commission in carrying out its responsibilities under this Act on vouchers signed by the chairman.

(e) The Secretary or his designee shall consult with the commission on all matters relating to the establishment, development and operation of the park and the commission is authorized from time to time on its own initiative to submit to the Secretary such recommendations as it deems appropriate.

SEC. 10. (a) Except as otherwise provided in this Act, the property acquired by the Secretary under this Act shall * * *

(1) Beginning at the point of intersection with the shore of Lake Michigan of the east line of section 20, township 29 north, range 14 west, forming the northeast corner of the D. H. Day State Park:

thence south along the east border of said State park one-half mile, more or less, to the point of intersection with the north right-of-way of State Highway M–109; thence west along the north right-of-way of said State highway one-half mile, more or less, to the junction of said State highway with State Highway M–209; thence south along the west right-of-way of said State Highway M–109 1½ miles, more or less, to the point of intersection with the south line of lot 1, section 29, township 29 north, range 14 west;

then west along the south line of said lot 1 to the northeast corner of lot 1, section 31, township 29 north, range 14 west; then west along the north border of said lot 1 to the northwest corner of said lot 1; thence south along the west border of said lot 1 and the west borders of lots 2 and 3 of said section 31 to the southwest corner of said lot 3; thence east along the south border of said lot 3 to the point of intersection of the west right-of-way of State Highway M–109; thence southeast along the west right-of-way of said State Highway M–109 one-half mile, more or less, to the point of intersection with the north line of section 5, township 28 north, range 14 west;

thence south along the west right-of-way of said State Highway M–109 2 miles, more or less, to its junction with State Highway M–22; thence southwest along the west right-of-way of said State Highway M–22 one half mile, more or less, to its point of intersection with the east-west quarter section

line of section 17 of said township 28 north, range 14 west;

thence west along said east-west quarter section line of said section 17 and the east-west quarter section line of section, township 28 north, range 14 west, and the east-west quarter section line of section 13, township 28 north, range 15 west, to the shore of Lake Michigan;

thence northerly along the shore of Lake Michigan to the point of beginning; also

(2) Beginning at the point of intersection with the shore of Lake Michigan of the south line of lot 1 of section 25, township 28 north, range 15 west;

thence east along the south line of said lot 1 to its meeting point with the west line of section 30, township 28 north, range 14 west; thence north along the west line of said section 30 to the northwest corner of said section 30; thence east along the north line of said section 30 300 feet, more or less, to the point of intersection with the south right-of-way line of State Highway M–22; thence east along the south right-of-way of said State Highway M–22 1,500 feet, more or less, to the point at which State Highway M–22 turns southeast;

thence southeast along the west right-of-way of said State Highway M–22 three-fourths of a mile, more or less, at which point State Highway M–22 meets the west line of the northeast quarter of the southeast quarter of said section 30; thence southwest along the west right-of-way of said State Highway M–22 to the point at which State Highway M–22 meets the north-south quarter section line of said section 30; thence south along the west right-of-way of said State Highway M–22 500 feet, more or less, to the point of intersection with the south line of said section 30;

thence south along the west right-of-way of said State Highway M–22 as said State highway passes along the north-south quarter section line of section 31, township 28 north, range 14 west, to the south line of said section 31 at which point the said State Highway M–22 intersects the Leelanau-Benzie County line into Benzie County;

thence south along the west right-of-way of said State Highway M–22 as said highway passes along the north-south quarter section line of section 6, township 27 north, range 14 west, and along the north-south quarter section line of section 7, township 27 north, range 14 west, and along the north-south quarter section line of section 18, township 27 north, range 14 west, to the point of intersection of the said north-south quarter section line with the south line of said section 18;

thence west along the north right-of-way of said State Highway M–22, as said State highway passes along the south line of said section 18, 1,320 feet, more or less, to the point at which State Highway M–22 turns southeast; thence along the west right-of-way of said State Highway M–22 1 mile, more or less, to the south line of section 24, township 27 north, range 15 west; thence west along the north right-of-way of said State Highway M–22 to the point of intersection with the west line of said section 24;

thence west along the north right-of-way of said State Highway M–22 2 miles, more or less, to the west line of section 27, township 27 north, range 15 west; thence southwest along the west right-of-way of said State Highway M–22 to the point of intersection with the north-south quarter section line of section 33, township 27 north, range 15 west, thence west along the north right-of-way of said State Highway M–22 1½ miles more or less to the west line of section 32, township 27 north, range 15 west,

thence north along the west line of said section 32 to the southeast corner of section 30, township 27 north, range 15 west; thence west along the south line of said section 30 and the south line of section 25, township 27 north, range 16 west, to the southeast corner of said section 25; thence north along the west line of said section 25 one-half mile more or less to the point of intersection with the shore of Lake Michigan;

thence northeasterly along the shore of Lake Michigan to the point of beginning; also

(3) North Manitou Island; also

(4) South Manitou Island.

SEC. 12. As soon as practicable after the date of enactment of this Act and following the acquisition by the Secretary of an acreage within the boundaries of the area designated for inclusion in the park which in his opinion is efficiently administrable for the purposes of this Act, he shall establish the Sleeping Bear Dunes National Park by publication of notice thereof in the Federal Register.

SEC. 13. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Amend the title so as to read: "An Act to establish the Sleeping Bear Dunes National Park.".

Mr. GRIFFIN. Mr. President, as the distinguished chairman of the subcommittee, the Senator from Nevada (Mr. BIBLE) has indicated, this is a subject that has been under consideration for a number of years. Indeed, I believe that the first bill was introduced back in 1961. It has been the subject of much controversy in my home State. While I share the interest and the desire of all Members of this body to preserve and conserve our natural resources, I must say that I have serious reservations about this legislation in its present form.

That does not mean I am not in favor of taking steps to preserve the Sleeping Bear Dunes, or, indeed, to establish a national park. As a Member of the House of Representatives, I introduced a bill on January 21, 1963, to establish a Sleeping Bear Dunes National Park—rather than a recreational lakeshore area, as is contemplated by the reported bill. The amendment I have offered in the nature of a substitute, closely follows the lines of the bill I introduced back in 1963.

By adopting this amendment we could provide the benefits of a national park for all the people with the least damage and disruption for the ecology and the residents of the area.

The principal advantages of my proposal over H.R. 18776 are as follows:

First. The acreage is reasonable. Under my proposal the park area would comprise about 37,000 acres rather than the 60,748 land acres designated in the pending bill.

Incidentally, the acreage which would be included under my amendment would conform more closely to the original recommendation submitted in 1959 by the Advisory Board on National Parks.

Second. Under my amendment, the park would be confined primarily to the undeveloped Lake Michigan shoreline area. My proposal would include in the national park the Sleeping Bear Dunes, the D. H. Day State Park, and all the land and Lake Michigan shoreline to the south thereof, which lies west of Highways M–109 and M–22, except the town of Empire, down to and including the Benzie State Park. My proposal would accomplish the two purposes proclaimed by the National Park Service: First, to preserve for posterity the beautiful Sleeping Bear Dunes, and, second, to set aside a significant portion of the diminishing undeveloped Lake Michigan shoreline.

Third, under my proposal, more of the developed property in the area would be protected from Federal condemnation. Under the reported bill, the Federal Government could condemn any property improved after December 31, 1964, more than 5 years ago. Under my proposal, property improved after December 31, 1968, could be condemned.

Under my proposal, the owners of improved or developed property on which building construction was begun prior to December 31, 1968, would continue to own, occupy, and enjoy their property without threat of condemnation. The Federal Government could acquire from the owner, by paying just compensation therefore, only two limited interests in such improved property: First, a scenic easement required that the general character and condition of the property be maintained; and second, an option to purchase such property if and when the owner, or his heirs, should ever desire to sell it.

By the time the reported bill could become law it would permit the Federal Government to condemn property improved 5½ to 6 years ago. Mr. President, I believe the cutoff date is unrealistic—and, perhaps, unconstitutional.

Mr. President, it is noteworthy that longtime owners of improved property have not been so severely treated in the establishment of other national parks in the recent past. Consider the precedents indicated by the national parks legislation listed below:

Popular name of act	Cutoff date	Date introduced	Effective date
Cape Cod National Seashore	Sept. 1, 1959	Feb. 9, 1961	Aug. 7, 1961
Fire Island National Seashore	July 1, 1963	Apr. 25, 1963	Sept. 11, 1964
Assateague Island National Seashore	Jan. 1, 1964	Jan. 6, 1965	Sept. 21, 1965

Both Cape Cod and Assateague Island National Seashore Acts were introduced less than 2 years after the established cutoff date. It is interesting to note that the Fire Island cutoff date was established later than its date of introduction.

Fourth, my proposal provides more protection for owners of undeveloped property. Unimproved or undeveloped property within the park area would be subject to condemnation requiring payment at fair market value. Indeed, under my amendment the Secretary of the Interior would be required, as soon as funds are available, to proceed expeditiously to acquire such property.

If the owner and the Park Service could not agree on a fair market value, then the owner could request the Federal district court to appoint three quali-

fied, independent appraisers. All costs of such appraisal would be borne by the Government.

Fifth. Under my amendment, Federal payments would be required in lieu of taxes.

When a school district floats a bond issue, and investors purchase the bonds, they do so relying upon the taxability of the real estate situated within the school district. When the Federal Government thereafter takes title to a portion of that real estate, and removes it from the tax rolls, I believe it is only fair and reasonable that the Government be required to make payments in lieu of the taxes which otherwise would be assessed until such time as the bonded indebtedness is paid.

Sixth. Under my amendment, the chairman of the Advisory Commission would be named by a majority of the Commission. The earlier legislation would have provided for an Advisory Commission of 10 members appointed by the Secretary of the Interior. My proposal provides that the 10 members would be named as follows: Two by the Benzie County Board of Supervisors; two by the Leelanau County Board of Supervisors; and four by the Governor of Michigan, two of which would be members of the Michigan State Conservation Commission. The two remaining members would be appointed by the Secretary of the Interior. Instead of allowing the Secretary to designate a chairman, my proposal would empower the Commission to name its own chairman by majority vote.

Seventh. Under my proposal, specific provision is made to require that adequate sewage treatment facilities be provided. If we are concerned about the ecology, we should make sure that the lakes in the area will not be polluted when the area becomes a lakeshore.

Mr. President, I believe my amendment deserves the support of the Senate, and I hope it will be adopted.

If this amendment is passed, I will then be able to vote for the legislation and the establishment of this national park.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

Mr. BIBLE. Mr. President, how much time do I have remaining, since we are under a time limitation?

The PRESIDING OFFICER. Under the unanimous-consent agreement, there is 14 minutes remaining on all amendments, the stipulation of the agreement being that the vote must come by 7 o'clock.

Mr. BIBLE. How much time do I have remaining? Do I have 7 minutes?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. BIBLE. Mr. President, I shall be very brief, because I realize the time is running.

The main thrust of the substitute offered by the distinguished Senator from Michigan—and it has a number of facets to it—is on the cutoff date, the provision is to roll forward the date we have in our particular bill as reported out of the Senate committee.

The effect of this amendment is to bring under the protective clause of the cutoff date some 171 residences which have been built since December 31, 1964. My position, in which I was sustained in the committee, is that the people of this area certainly had ample notice that there was great interest in the Sleeping Bear Dunes, that the oill had passed the Senate twice, and that it had passed the House committee on one occasion, and I think they have been on notice from 1963 forward that they were acting at great risk if they were to build homes and expect them to be completely excluded from possible condemnation.

The difficulty with rolling the cutoff date forward is that it does take a very beautiful part of the Sleeping Bear Dunes and lakeshore area and, in effect, would have it subdivided.

The argument is made, as it was made within the committee, and as it was considered by the House of Representatives and rejected, to the effect that the people had built their homes there, and would not have the protection to which they were entitled.

As I say, I think the answer to that is that they acted with their eyes open, with the very distinct possibility that this bill would be enacted and that their homes would be taken.

It should be said that they are going to be fully compensated if the homes are taken. The Senate report, in part, specified that most property improved since December 31, 1964, which is the cutoff date in the bill before us, as reported out by the committee and as passed by the House of Representatives, would probably not be acquired without the owners' consent if the lands involved are not found to be needed for public use and development, so long as they are used in a manner compatible with the lakeshore.

In my judgment, the broad public interest would be preserved by adopting the bill as reported out by the Senate committee, and as sent to us by the House of Representatives.

I might say that the present Representative from the very district that the distinguished Senator from Michigan (Mr. GRIFFIN) formerly represented was in full favor of the bill. As a matter of fact, he made a speech against the rolling forward of the cutoff date beyond the 1964 date.

Accordingly, I think that the bill as passed and that the substitute should be defeated.

I yield the remainder of such time as I have left to the distinguished Senator from Michigan (Mr. HART).

Mr. HART. Mr. President, for the third time, the Senate is asked to authorize the Sleeping Bear Dunes National Lakeshore in Michigan. As I have done twice in past Congresses, I urge that the Senate approve this important conservation measure. On those two earlier occasions, the Senate did approve.

First of all, I wish to express my gratitude to the able chairman of the subcommittee, Senator BIBLE, for his patience and unending cooperation—over the years—with those of us who have sought to bring this lakeshore into being. Certainly, the contribution that my colleague from Michigan, Senator GRIFFIN, has made thru these years is very great. As he has indicated, he still feels strongly about the desirability of a much smaller area, a change in the cutoff date and additional provisions with respect to developed properties. My appreciation extends, of course, to the distinguished chairman of the committee, the Senator from Washington (Mr. JACKSON), and to all who have helped us arrive at this day—including, prominently, my colleagues, Representatives JAMES O'HARA, GUY VANDER JAGT, PHILIP RUPPE, and others of the Michigan delegation.

The Committee on Interior and Insular Affairs has unanimously reported H.R. 18776, and I am delighted to support this bill. As was the case when we passed this proposal in the 88th Congress and again in the 89th Congress, H.R. 18776, in its present form, has the full support of the administration, the Department of the Interior, and the National Park Service, the Michigan Legislature, the Governor of Michigan, the Michigan Department of Natural Resources, and all of the leading conservation organizations, nationally, as well as in Michigan.

But this time, Mr. President, there is a major difference, for today, we are considering a bill which already has been approved—in the identical form—by the other body.

Thus, the Senate today has an opportunity to complete congressional action on a long-pending, extremely important, and increasingly urgent conservation effort. To secure the preservation of the Sleeping Bear Dunes as a unit of our national park system long has been a dream of the conservation-minded people of Michigan.

This is a highly unusual, fabulously diverse area, offering unparalleled potential for nature study and appropriate forms of public recreational use. It is a landscape of unquestioned national significance, one which should be assured full protection as a legacy to our children's children of the beauty of the unspoiled Great Lakes scene.

The first national attention to this area came in 1957, when the National Park Service undertook a survey of the remaining natural areas and recreational potential of the Great Lakes shoreline. That survey concluded that the Sleeping Bear Dunes area was of paramount importance, that its nationally significant values and potential required that a more detailed onsite study be undertaken in order to find how best to preserve the area. On the basis of those studies, in 1961, our late colleague, Pat McNamara, and I introduced legislation to establish the area as a unit of our national park system. Hearings were held in the local area, and many deficiencies in our first legislative proposal were pointed out by local people. Those people had—and have today—the same interests as we do: to assure the wise preservation of a truly outstanding area. They questioned some of the provisions proposed, and those questions set us on the course of finding the refinements and improvements that would assure that our legislation would do the best job in the interests of all concerned.

Mr. President, this is a point that I wish to emphasize: The bill we have before us today is a better, fairer, more ef-

fective bill because of the many contributions made constructively by concerned people in the immediate area involved. There have been a few who have simply been opposed—"period"; but the vast majority of local citizens have sought exactly the same thing we have sought, and as a result, a sound and well-balanced bill is before us today.

In 1963, the Senate first passed a Sleeping Bear Dunes bill. Unfortunately, it did not receive attention in the other body. Again in 1965, the Senate passed this proposal, in a bill calling for a 40,100-acre Sleeping Bear Dunes National Lakeshore. The following year, after extensive hearings, the House Committee on Interior and Insular Affairs favorably reported the Senate-passed bill, having added two key tracts at the suggestion of my distinguished colleague from Michigan (Mr. GRIFFIN). The resulting bill, which would have established a 60,000-acre National Lakeshore, did not, unfortunately, reach the floor of the House for final action before the adjournment of the 89th Congress. Having come so close, we had to begin again.

From that point forward, I no longer felt I could come back to the Senate and ask for action without solid action first on the House side. During the 90th Congress, priority attention on the important Redwoods and North Cascades National Parks and on the wild and scenic rivers bill, prevented the House committee from taking up the Sleeping Bear bill until the last few days of the Congress, when hearings were held.

Thus, we came into the 91st Congress, but on much different footing. For it was becoming increasingly evident that the people of Michigan wanted to see this conservation effort succeed, and concern over encroachments on the lakeshore area was growing. Given those factors, the Michigan congressional delegation and the officials of our State joined together, and the result has been most encouraging. Much credit is due in particular to Michigan Representatives JAMES O'HARA, PHILIP RUPPE, and GUY VANDER JAGT. As the Representative of the district involved, GUY VANDER JAGT devised ways to resolve remaining issues and to come up with a broadly acceptable bill. This has been accomplished, with the full cooperation of all the Members of the House from our State.

The result has been refinement of a new Sleeping Bear Dunes bill, one which can give maximum protections to local interests and the rights of present property owners, while also meeting the increasingly urgent conservation need. That bill, H.R. 18776, was unanimously reported by the House Committee and passed the other body on September 22, by voice vote.

This present bill, H.R. 18776, differs in a few particulars from the bill last passed by the Senate in 1965. Each of the differences is a definite improvement, and each has my full support. Basically, the bill does these things:

First, it authorizes the Secretary of the Interior to establish a 60,000-acre Sleeping Bear Dunes National Lakeshore as a unit of the National Park System.

It authorizes the Secretary to acquire lands within the boundaries of the National Lakeshore. However, lands owned by the State of Michigan can be acquired only by donation and all such lands—with one exception—must be donated before the Secretary may actually establish the national lakeshore. The exception is a tract of 300 acres at the mouth of the Platte River, which the State of Michigan wishes to retain under its own management in connection with the Ohio salmon fishery program.

The bill authorizes the Secretary to acquire private lands within the area by a variety of means, including through eminent domain proceedings where necessary. But—and I emphasize this—the Secretary's power of eminent domain is, in turn, given explicit limits. This is done out of recognition that it is not necesary to acquire long-established homes within the area—of which there are some 250—Thus, it has been possible to write into the bill a provision specifically protecting those long-establish improvements from condemnation, so long as they are maintained in a way that does not detract from the overall landscape patterns. This protection against condemnation is perpetual, it runs with the land and so can be conveyed by sale or inheritance.

In developing that protection, we have had to choose a mechanism that would grant this compatible protection to long-established properties, but not to recent improvements which may, in fact, have been built with just such a hope for later protection within the park in mind. To make this distinction—which is essential if the quality of the lakeshore is to be maintained and the public interest protected—we have used the common mechanism of a cutoff date; that is, homes constructed before 1965 are protected from condemnation, those built subsequently are not. The December 31, 1964, date has been selected—and approved by the House and by our committee—because it represents the time since which the property owners within the area have been well on notice of the pending legislation to create the national lakeshore as Senator BIBLE has noted. Persons building since that time have done so fully within their rights, but also with full notice through many media that a bill involving their lands was under active congressional consideration. As I have detailed earlier, this has certainly been the case.

Mr. President, I give this detail about the so-called cutoff date because it has been a point of some confusion. Let it be clear, therefore, that this date has absolutely nothing whatever to do with anyone's rights to property or with anyone's right to just compensation if his property is taken by the Federal Government for the purposes of the national lakeshore. Clearly under the Constitution the Congress has the power to take the entire area by eminent domain for public purposes. In determining we need not do so and that we can compatibly grant certain protections to long-established property owners, we are choosing to limit the power we clearly have. There is nothing even remotely unconstitutional about this mechanism, which is, indeed, something we have used in every park bill in recent years.

If an individual's property which was improved since December 31, 1964, is, in fact, taken under eminent domain by the Federal Government, then that individual will receive full market value for his land and all improvements as of the date of the taking, regardless of whether the improvements were constructed before or after the cutoff date. The cutoff date has absolutely no relation to the matter of compensation in any way whatsoever.

To conclude on this discussion of the so-called cutoff date, let me just point out that most of the homes which fall under its effect—that is, homes or improvements constructed after December 31, 1964—will probably not be taken by the Federal Government in any case. But what is essential is that we grant the Secretary the flexibility on this point which he must have to discharge the conservation purpose we are assigning him. To alter the cutoff date would be to seriously upset this flexibility.

The bill as reported also provides a very explicit statement of just what the purpose of this national lakeshore is to be. It makes clear that the priority purpose intended by Congress is to secure the preservation of the important natural features of the area. Within the limits imposed by that priority, the National Park Service is to provide recreational opportunities to the public which are "consistent with the maximum protection of the natural features within the area."

This is a clear and unequivocal statement of congressional intent, and I mention it so that the legislative history will be abundantly evident. I do know that the National Park Service has administratively chosen to divide the areas under its care into various management categories and that national seashores and national lakeshores are somewhat arbitrarily placed within their recreational area category, but I want it to be on the record here that, regardless of how they choose to categorize the area, it is the intention of Congress that preservation be the priority purpose to be served.

In that same vein, the House has added to the bill, and I support, a new subsection 6(c) which requires the Secretary to undertake a study of lands within the national lakeshore to determine which, if any, may be suitable for further special designation under the Wilderness Act of 1964. Wilderness is not a common feature of our part of the country, but if any lands within the national lakeshore are suitable to wilderness standards, we should determine that fact and take the appropriate action. Obviously, any wilderness areas which may be identified in this area will be smaller than the extensive wilderness lands we have been able to preserve in less developed regions of the country.

Mr. President, these two matters I have touched upon—the question of the limitations on condemnation authority and the question of preservation policy—have been of particular concern to the people in the area of the national lake-

shore. I want to take note of the fact that it is because Representative VANDER JAGT has so diligently worked on these problems—and I have had the satisfaction of working with him on them—that they have been so well resolved. In the same way, he has been able to assure concerned officials in his district that the State of Michigan will undertake to reimburse any tax revenue losses that may ensue in implementing this national lakeshore.

These have not been simple or easily resolved problems, but they have been resolved, and the bill we have today is the better for it. Many people have made important contributions to that result, but none greater than the bipartisan work of my colleagues in the Michigan delegation in the other body.

Representative VANDER JAGT, in his eloquent statement on the House floor when this bill was considered there, made a particularly cogent remark:

> But an interesting thing has happened to this bill on its way to this moment in its legislative history. Although the opposition in 1966 really centered around those two fundamental problems, now that the problems have been removed, the opposition remains.
>
> As we look at the opposition, we see that those who are opposed have not been as interested in solving problems as in using the problems to defeat the legislation.

I repeat Mr. VANDER JAGT's observation here because it is so accurate a portrayal of our experience. But I am happy to say that I find little opposition now remaining to this bill. In fact, I recall no bill which, having once been so thoroughly and widely controversial, now has such overwhelming, bipartisan support.

As I have pointed out, the present House-passed bill, H.R. 18776, differs in some ways from the bill I had introduced last year. Each of those changes is an improvement, and I support this bill in its present form.

In the same way, H.R. 18776 has been specifically endorsed, in its present form, by the administration and the Department of the Interior. It has the support—in this form—of the Governor of Michigan and the Michigan Department of Natural Resources. The proposal has been unanimously supported by the Michigan Legislature, by the Great Lakes Commission, and by the Upper Great Lakes Regional Commission. Dr. Ralph MacMullan, the director of our State department of natural resources, has called it the single most important action the Federal Government could take to aid the overall conservation and recreation program of the State of Michigan.

Furthermore, this bill is endorsed by every major conservation group in the State of Michigan and by every leading national conservation group. Any listing of these is likely to be incomplete, but the following are some of the groups supporting H.R. 18776:

The Sierra Club and its Mackinac chapter.

The Wilderness Society.

The National Wildlife Federation.

The Michigan United Conservation Clubs.

The National Audubon Society and the Michigan Audubon Society.

The Izaak Walton League of America.

Friends of the Earth.

The American Forestry Association.

The Citizens Committee on Natural Resources.

The National Recreation and Park Association.

The National Park and Conservation Association.

Trout Unlimited and its Michigan council and chapters.

The Michigan Parks Association.

The Federation of Western Outdoor Clubs.

The Michigan Chapter of the American Society of Landscape Architects.

The Conservation Committee of the Garden Clubs of America.

The Michigan Division of the Association of American University Women.

The United Automobile Workers.

The Michigan AFL–CIO.

The West Michigan Environmental Action Council.

The Holland Area Environmental Action Council.

The Michigan Trailfinders.

The Michigan Recreation and Park Association.

The Defenders of Wildlife.

Environmental Action.

Enact—Environmental Action for Survival—at the University of Michigan.

The Student Coalition for Environmental Protection.

The Michigan Association of Conservation Ecologists.

The Michigan Natural Areas Council.

The Michigan Botanical Club.

This is impressive support. It is evidence, Mr. President, of the national importance attached by conservationists to this long-overdue legislation. But the support that is perhaps most important is that in the local area.

As all of us realize, this was a controversial proposal in the Sleeping Bear Dunes area. There has been much discussion on both sides. But, increasingly, local people have recognized that the national lakeshore will do just what they want done—it will protect the magnificent Sleeping Bear Dunes area without adverse local impact. As a result, local support has been growing rapidly over recent years. In June, the Board of Commissioners of Benzie County went on record—after opposing the bill in the past—as supporting this proposition. And a local citizens group, the Save the Sleeping Bear Dunes Committee, gives evidence of the broad and committed support right in the immediate area of the national lakeshore. Individuals in the region—too numerous to list—have worked courageously and steadfastly over the years to bring this effort to culmination.

Mr. President, this support has been growing, not just because people have seen what the national lakeshore can do to preserve their area but because they have seen visible evidence of what is going to destroy the area without such protection. The Sleeping Bear Dunes region is very attractive, and, for just that reason, pressures of development and subdivision are growing enormously. Just since 1964, nearly 200 new structures have been built within the boundaries set forth in this bill. Each—taken by itself—may be a fine, high-quality home, but, taken together, they are turning the area from a natural landscape into a subdivision. Nothing is going to stop this, unless it is our firm decision that the values at stake are too significant and of too great a public value to be allowed to slip away in this piecemeal fashion.

That is the decision before us this evening as we act on this bill: to secure a great national lakeshore and protect a unique part of the American heritage for all time, or to fail in our responsibility to constituents not yet born and to permit a great treasure to be divided up and squandered forever. If we are to measure up in the eyes of those who will receive this land and judge our stewardship, this park must be created.

A key part in realizing the potential of this national lakeshore, however, will remain the responsibility of the people. For that reason, we have given full opportunity for wide public participation in making those decisions which will determine how this area should be developed and managed. Section 4 of the bill establishes a Sleeping Bear Dunes National Lakeshore Advisory Commission to work with the Secretary and the National Park Service during the years in which the national lakeshore is being implemented. It is essential that this Commission be broadly representative of local and statewide interests involved here, and that it take part in the important decisions from the very outset. I want particularly to note that under section 3 of the bill, a key decision regarding the classifications of lands within the lakeshore will be made by the Secretary of the Interior within 30 days "or as soon as possible thereafter." It is my hope—and I am writing to the officials involved on this point—that the members of the Commission can be appointed on an urgent basis, so that they will have a realistic part in this earliest decision about the land management of the national lakeshore.

In the same way, Mr. President, I believe it is essential that the public fully review the plans for development within the national lakeshore before they are implemented. A master plan has been developed for the national lakeshore, but has yet to be made public. I urge the National Park Service to make that plan widely available immediately and to provide full and well-announced opportunities—through public hearings or meetings—for public comment on the details of the plan. Such meetings should offer full opportunity for public comment and involvement. I would think this would be an absolutely prerequisite to any major congressional funding of the development plan. I am particularly concerned that the routing and design of the scenic road authorized in section 12 of the bill be cautiously and carefully worked out, with full public discussion of the decisions as they are considered, before they are implemented. I believe

a formal hearing should be held on the routing plan, and a separate hearing once the design features are then worked out. It would seem to me most advisable that environmental experts and ecologists outside the National Park Service work in this effort on an advisory basis, and I know that professional groups such as the Michigan Natural Areas Council and the Michigan Association of Conservation Ecologists would be happy to cooperate.

If the national lakeshore is viewed not simply as a unit, but as the focus of a regional opportunity, then it offers a great stimulus and potential to bring effective regional planning to this area as a whole. The agencies of the Federal and State governments are alert, I know, to these possibilities, and I am confident all possible efforts will be made along these lines, as for example, in regional waste water treatment systems and transportation planning.

Over the years as we have sought to improve this bill and broaden public support, my able colleague, Senator GRIFFIN, has shared with all of us an undestanding of the desirability that an area of "the Bear" be stabilized and protected. Some changes he has urged have been incorporated. As his position is made clear today, he remains strongly in support of even further modification. While the committee and our colleagues in the other body do not accept—and I hope the Senate will not accept—further amendments, the sincerity of my colleague in his efforts is acknowledged by all.

Mr. President, the Sleeping Bear Dunes National Lakeshore holds the promise of achieving lasting conservation benefits for the public interest. It can do this, under the terms of this bill, with minimum adverse impact on existing patterns. Indeed, it can hold a key to regional improvement on a wide level. By passing this bill, the Congress can secure an essential preservation objective, can provide recreational opportunities of major importance, and can achieve this in a way that will be of lasting benefit to all concerned. We owe no less to future generations.

I urge approval of H.R. 18776 as it stands. I hope that the Senate tonight will support the recommendations of our committee, which reviewed and put its imprimatur on the earlier action of the House.

Two additional points should be made about the amendment offered by my colleague (Mr. GRIFFIN). First, the Governor of the State of Michigan has indicated his intention to propose State legislation to assist the local governments with relation to replacement of any lost tax revenues.

Second, the Senator's amendment would provide an additional authorization of $1 million for sewage treatment facilities for the national lakeshore. Interior Department witnesses testified that the $18,769,000 authorized for development costs in the committee bill includes provision for sewage treatment facilities adequate for the lakeshore.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD several communications from national conservation groups on the cutoff issue, in response to an inquiry which I made of them.

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

WASHINGTON, D.C.,
October 7, 1970.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

Responding to your recent inquiry, National Wildlife Federation and our affiliate, Michigan United Conservation Clubs, warmly endorse H.R. 18776, Sleeping Bear Dunes National Lakeshore.

We feel that any amendment changing the December 31, 1964, cutoff date would be most ill-advised. This would weaken a vital feature of the bill. H.R. 18776, as written, is a strong and well-balanced conservation measure of real importance.

THOMAS KIMBALL,
Executive Director, National Wildlife Federation.

THE WILDERNESS SOCIETY,
Washington, D.C., October 7, 1970.

Hon. PHILIP A. HART,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Thank you for the opportunity to respond to the questions you raised in your recent letter.

The Wilderness Society an its Michigan members and cooperators view the proposed Sleeping Bear Dunes National Lakeshore as a most important conservation issue. Members on our staff have spent considerable time in that area and are well aware of its special values and those threats which place the area in such jeopardy at this time. We believe enactment of H.R. 18776 to be one of the most vital parkland conservation goals for the 91st Congress.

We have carefully studied the matter of the cutoff date (sections 11 and 13) in the bill. The Wilderness Society believes it would be a serious error to advance the December 31, 1964, cutoff date. The effect of any such action would be to grant permanent protection to additional numbers of recently built structures—they would become lasting features of what is supposed to be a dominantly natural park area. We view this measure to be a strong piece of legislation that can effectively preserve the enormous public values of Sleeping Bear Dunes Lakeshore area.

We gladly join other conservationists in being most hopeful that H.R. 18776 will be enacted without amendments.

Sincerely,

STEWART M. BRANDBORG,
Executive Director.

SIERRA CLUB,
Washington, D.C., October 7, 1970.

Senator PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Thank you for your letter with reference to H.R. 18776, the Sleeping Bear Lakeshore Bill.

As we testified before the Senate Subcommittee on Parks and Recreation, we endorse and strongly support this bill, both its general intent and its specific language. We would view any amendment which would alter the so-called cut off date as a serious threat to the fundamental conservation purpose of the bill. This is a technical matter, but its impact is clear; to advance the cut off date would seriously compromise the natural quality of the Sleeping Bear Dunes Lakeshore.

We note that the Department of the Interior supports H.R. 18776 in its present form and specifically testified in opposition to any such amendment.

In our view any such amendment would gravely weaken the bill and strike at the very heart of its conservation purpose. The Sierra Club urges that you actively oppose any amendment of this altogether excellent bill. We appreciate your leadership and the opportunity to respond to your inquiry.

Sincerely,

W. LLOYD TUPLING,
Washington Representative.

THE IZAAK WALTON LEAGUE OF AMERICA, INC.,
Washington, D.C., October 7, 1970.

Hon. PHILIP A. HART,
U.S. Senate,
Washington.

DEAR SENATOR HART: Thank you for your letter in which you requested our views concerning Sections 11 and 13 of H.R. 18776, the proposed Sleeping Bear Dunes National Lakeshore bill. As you know, the League has had a longstanding commitment in support of the Sleeping Bear Dunes National Lakeshore, and we very much appreciate the opportunity to comment.

In response to your specific question, we believe it would be most undesirable to extend the cut-off date in Sections 11 and 13 of the bill. In fact, extension of the cut-off date would conflict with the public conservation purposes which will be served by the National Lakeshore.

As we understand it, the cut-off date in the bill controls which existing structures within the boundaries of the Lakeshore may be subject to condemnation. Extending the cut-off date from December 31, 1964 to a more recent date would have the practical effect of granting perpetual protection from condemnation to a number of very recently constructed properties. In other words, some structures, whether they are compatible with the National Lakeshore or not, would be locked in as permanent features. It is our general belief it is far more desirable to rely on the usual procedure, which is to grant protection against condemnation to long-established properties when they are compatible with the conservation purposes to be served by the Lakeshore.

This existing procedure is not only more flexible, but affords a greater degree of protection to those landowners and residents who are using their properties in ways which are thoroughly consistent with the preservation of the natural features of the area.

In our judgment, H.R. 18776 deserves the support of the Senate as written. Its terms provide some latitude in what has been a very difficult set of circumstances, while at the same time securing an important objective of preserving the natural values of the Sleeping Bear Dunes as a permanent legacy for future generations. Members of our staff very recently visited the area, and in our considered judgment H.R. 18776 should be enacted as is as expeditiously as possible. You have our wholehearted support for your good work in this area.

With best wishes, I am,

Cordially,

J. W. PENFOLD,
Conservation Director.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally charged against both sides.

Mr. BIBLE. That is entirely agreeable.

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

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 (Mr. CHURCH). Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Michigan (Mr. GRIFFIN).

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 Virgina. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Sentor from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), 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 Georgia (Mr. RUSSELL), the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. SYMINGTON), 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 Georgia (Mr. TALMADGE), 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 Maine (Mr. MUSKIE), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Massachusetts (Mr. KENNEDY) would each vote "nay."

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senators from New York Mr. GOODELL and Mr. JAVITS), the Senator from California (Mr. MURPHY), the Senator from Kansas (Mr. PEARSON), 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 Utah (Mr. BENNETT), and the Senator from North Dakota (Mr. YOUNG) are detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT) would vote "yea."

On this vote, the Senator from Kansas (Mr. PEARSON), is paired with the Senator from New York (Mr. GOODELL). If present and voting, the Senator from Kansas would vote "yea" and the Senator from New York would vote "nay."

The result was announced—yeas 22, nays 39, as follows:

[No. 364 Leg.]

YEAS—22

Allott	Dominick	Percy
Baker	Griffin	Saxbe
Boggs	Gurney	Scott
Cook	Hansen	Smith, Maine
Cooper	Hatfield	Thurmond
Cotton	Hruska	Williams, Del.
Curtis	Jordan, Idaho	
Dole	Miller	

NAYS—39

Allen	Ervin	Metcalf
Bayh	Hart	Mondale
Bible	Holland	Nelson
Brooke	Hollings	Packwood
Burdick	Hughes	Pastore
Byrd, W. Va.	Inouye	Pell
Case	Jackson	Proxmire
Church	Magnuson	Randolph
Cranston	Mansfield	Ribicoff
Dodd	Mathias	Schweiker
Eagleton	McClellan	Spong
Eastland	McGovern	Stevens
Ellender	McIntyre	Williams, N.J.

NOT VOTING—39

Aiken	Harris	Pearson
Anderson	Hartke	Prouty
Bellmon	Javits	Russell
Bennett	Jordan, N.C.	Smith, Ill.
Byrd, Va.	Kennedy	Sparkman
Cannon	Long	Stennis
Fannin	McCarthy	Symington
Fong	McGee	Talmadge
Fulbright	Montoya	Tower
Goldwater	Moss	Tydings
Goodell	Mundt	Yarborough
Gore	Murphy	Young, N. Dak.
Gravel	Muskie	Young, Ohio

So Mr. GRIFFIN's amendment was rejected.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BIBLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIBLE. Mr. President, I ask unanimous consent that extracts from the report on the Sleeping Bear Dunes National Seashore bill be printed in the RECORD as a part of my remarks and immediately at the conclusion thereof.

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

PURPOSE

The purpose of H.R. 18776 is to establish the Sleeping Bear Dunes National Lakeshore in one of the most scenic of all scenic areas of the Lake Michigan region. The lakeshore is readily accessible to some 30 millions of urban dwellers of the Midwest and other parts of the country.

The national lakeshore would encompass 71,168 acres of land and water, of which the total land area would be 60,748 acres in three closely associated mainland units and two lake islands. It would bring into public ownership for preservation and public enjoyment 65 miles of Lake Michigan shoreline, a great public resource that is dwindling at an alarming rate. Here, along the only one of the five Great Lakes that is entirely within the United States, are towering sand dunes and gracious beaches with a backdrop of forested hillsides and beautiful inland lakes.

In addition, parts of the area have outstanding scientific values in their flora and fauna.

LEGISLATIVE HISTORY

Bills to establish a National Lakeshore in the storied Sleeping Bear area have been before successive Congresses for more than a decade, beginning with S. 2460, 86th Congress, of which the late Senator Pat McNamara and Senator Philip Hart of Michigan were sponsors. This was a general measure for preservation of shoreline areas of outstanding recreational values.

In the next Congress, the 87th, Senators Hart and McNamara introduced S. 2153 on June 27, 1961, the first of a long series of specific bills for a Sleeping Bear Lakeshore.

Understandably, the initial proposed legislation, involving acquisition of substantial tracts of privately-owned lands and curtailment of some commercial activities, was subject to some little controversy. Over the years, hearings have been held, views exchanged, compromises made and differences of opinion smoothed out.

Twice, in 1963 and again in 1965, the Senate passed Sleeping Bear bills, only to have them die in the other body.

In this Congress, Senator Hart introduced a bill that became S. 1023 on February 17, 1969, but the Senator did not press for action by the Senate committee until it became apparent that favorable action by the House on one of the companion bills was likely. Public hearings were held in the Senate committee on August 26, 1970, and Senators Hart and Griffin appeared in support of H.R. 18776 as had been reported favorably by the House Interior Committee, embodying many of the recommended amendments.

Also appearing in support were representatives of the State of Michigan, including a spokesman for the Governor, and various Michigan citizens and regional conservation groups. The State legislature submitted a resolution strongly in support.

It cannot be said that everyone interested endorses H.R. 18776 without qualification. However, most of those expressing views did support the objectives of the bill, that is, the protection of this magnificent area, much of it still in substantially its pristine beauty, from developments that would destroy its values for the spiritual and physical refreshment of the citizens of our Nation. The bill provides for a large degree of local autonomy in the area, and it is anticipated that the local government entities will make good use of the provisions both to protect the quality of the area and the interests of local residents. This intent and purpose can be accomplished under the bill by cooperation between Federal, State, and local entities.

PROVISIONS AND ANALYSIS

Section 1 states the general purposes of the legislation and emphasizes that the thrust of the lakeshore shall be to protect the scenic beauty and natural character of the area not only for the recreational enjoyment of the general public but for the local residents as well. It emphasizes that, in planning the recreational features of the lakeshore, all governmental entities should cooperate to preserve the values inherent in the area.

Section 2 authorizes the establishment of the national lakeshore as soon as sufficient lands within the boundaries designated have been acquired. Under the terms of the bill, the lands of the State Coho salmon program on the Platte River will be included in the lakeshore boundaries, but will be retained by the State and administered by it in cooperation with the administration of the lakeshore.

Section 3 provides that within 30 days after the effective date of the act, the Secretary of the Interior will classify all lands within the lake-shore boundaries into three categories. Under category I, lands classified for public use and development are to be acquired as soon as possible after appropriations are made available. Within 150 days after enactment, he is required to determine which lands should be classified for environmental conservation (category II) or private use and development (category III) and, in these areas, he is authorized to acquire less than fee interests (e.g., rights-of-way and

scenic easements). If, after notice, the owners of category II and III lands agree to limit the use and development of their lands, then the Secretary would be prohibited from condemning them unless the owner violates the restrictions to which he agreed or unless the land is later needed for some public use facility. The language of section 3 does provide, however, that the Secretary shall retain the power to acquire the fee simple title if the cost of the lesser interest is substantial.

Section 4 authorizes the creation of a 10-member advisory commission to serve without compensation for 10 years from the date of enactment of the act. Such commission can serve a useful function in developing a harmonious atmosphere for the lakeshore as it begins to mature. Not only do such commissions permit local participation in the planning and development of the area involved, but they serve as useful arenas for the exchange of ideas.

Section 5 contains the usual language concerning hunting and fishing in recreation areas. Unlike national parks and monuments, hunting is generally permitted in national lake shores, seashores, and recreation areas, subject to State and Federal laws and reasonable regulations issued by the Secretary of the Interior.

Section 6 provides that the area shall be administered in accordance with the general laws applicable to the administration of areas of the national park system and it further provides that the Secretary shall prepare an appropriate land and water use management plan and that he shall review the areas involved to determine their suitability for inclusion in the national wilderness system.

Section 7 makes it absolutely clear that the establishment of the lakeshore is in no way intended to prohibit the assessment and collection of taxes on any privately held real property interest within the lakeshore boundaries.

Section 8 authorizes the Secretary to acquire the necessary lands and interests in lands for the purposes of this act and permits him to acquire an entire tract if it is only partially within the lakeshore in order to avoid severance damages, but any lands acquired outside the authorized boundaries are to be used for the purposes of exchange for lands in the lakeshore or disposed of in accordance with the provisions of the Federal Property and Administrative Services Act. Properties within the lakeshore which are owned by the State of Michigan may be acquired only by donation and the Secretary is required to consider all offers of individual owners to sell, to expedite offers made under hardship circumstances, and to make a reasonable effort to acquire privately held property by negotiation before initiating condemnation proceedings.

Section 9 requires the Secretary to assist local units of government in the establishment of suitable zoning bylaws. When such governmental units promulgate valid zoning bylaws, which are approved by the Secretary, then the Secretary is prohibited from acquiring qualified improved properties by condemnation so long as the owner complies with the ordinances. The authority to condemn an improved property will remain suspended in the event that no zoning bylaws are approved if the individual owner of such property notifies the Secretary of his intention to use it in a manner consistent with the objectives and provisions of the act. If the owner fails to comply with the restrictions, the prohibition against condemnation may be suspended. Before this suspension of condemnation may be lifted by the Secretary, he must notify the owner in writing and describe to him the nature of the activity which is not in compliance with the restrictions. Such owner is permitted 60 days to discontinue the activity before the Secretary may initiate condemnation proceedings.

Section 10 permits owners of qualifying improved residential property within the lakeshore boundary to retain such property for a term of 25 years, or for life, if such use is not incompatible with the purposes of the act. If the owners elect to retain a limited interest, then the purchase price is reduced accordingly.

Section 11 defines improved property to mean "a detached, one-family dwelling, construction of which was begun before December 31, 1964." While the alternatives available to owners of properties improved prior to 1964 are not to be extended to owners who subsequently improved their properties, it should be recognized that—

(1) Any improved property acquired by condemnation or otherwise must be purchased at fair market value or at the negotiated price.

(2) Properties improved since December 31, 1965, would probably not be acquired without the owner's consent if the lands involved are not found to be needed for public use and development so long as they are used in a manner compatible with the lakeshore.

Section 12 authorizes the Secretary of the Interior to acquire lands for the purposes of the scenic road depicted on the map and to construct and administer it in accordance with standards suitable to the purposes for which it is intended.

Section 13 prohibits the Secretary from condemning commercial properties within the lakeshore which were in existence on December 31, 1964, if, in his opinion, such properties are not detrimental to the lakeshore and if they are compatible with it.

Section 14 requires the Secretary to provide any owner of a property which is not subject to condemnation with a certificate indicating that such authority is prohibited and the reasons therefore.

Section 15 authorizes limited appropriations for the acquisition of lands and interests in lands and for the development of the area. (See discussion following.)

COSTS

The amounts authorized to be appropriated for land acquisition are limited to $19,800,000. Such appropriations will be made from moneys available in the land and water conservation fund which are devoted to the Federal outdoor recreation land acquisition programs.

In addition, the bill authorizes the appropriation of $18,769,000 (June 1970 prices) for the development of the area. It is anticipated that these moneys, when appropriated, will be used for the construction of a visitor center, roads, campgrounds, overlooks, picnic areas, trails, beach facilities, comfort stations, and other public use facilities. The committee adopted the language recommended by the Department with respect to changing construction costs so that in the event that general costs increase, the amounts authorized to be appropriated may vary accordingly. While the committee recognizes the desirability of allowing this modest measure of flexibility, it expects to be fully advised of any developments which occur which will, or may, result in a request for appropriations in excess of the amount stipulated.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 18776) was passed.

Mr. BIBLE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 378. An act for the relief of Peter Rudolf Cross;

S. 583. An act to provide for the flying of the American flag over the remains of the U.S.S. *Utah* in honor of the heroic men who were entombed in her hull on December 7, 1941;

S. 732. An act for the relief of Mrs. Nimet Weiss;

S. 1123. An act for the relief of Ah Mee Locke;

S. 1628. An act granting the consent of Congress to the Western Interstate Nuclear Compact, and related purposes;

S. 2176. An act to implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes;

S. 2314. An act to amend section 4 of the Revised Organic Act of the Virgin Islands relating to voting age;

S. 3138. An act for the relief of Ruth E. Calvert;

S. 3154. An act to provide long-term financing for expanded urban mass transportation programs, and for other purposes;

S. 3167. An act for the relief of Kimoko Ann Duke;

S. 3212. An act for the relief of Curtis Nolan Reed;

S. 3263. An act for the relief of Maria Pierotti Lenci;

S. 3265. An act for the relief of Mrs. Anita Ordillas;

S. 3600. An act for the relief of Kyung Ae Oh;

S. 3675. An act for the relief of Ming Chang;

S. 3813. An act for the relief of Kim Julia and Park Tong Op;

S. 3822. An act to provide insurance for member accounts in State and federally chartered credit unions and for other purposes;

S. 4073. An act for the relief of Hyun Joo Lee and Myung Joo Lee;

S. 4235. An act to continue the jurisdiction of the United States District Court for the District of Puerto Rico over certain cases pending in that court on June 2, 1970; and

S. 4247. An act to amend the Bankruptcy Act, sections 2, 14, 15 17, 38, and 58, to permit the discharge of debts in a subsequent proceeding after denial of discharge for specified reasons in an earlier proceedings, to authorize courts of bankruptcy to determine the dischargeability or nondischargeability of provable debts, and to provide additional grounds for the revocation of discharges.

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

The Senate resumed the consideration of 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.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may be permitted to proceed for 1 minute.

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

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senator will be seated.

Mr. BYRD of West Virginia. Mr. President, under the previous order the Senate will now proceed to vote on the amendment offered by the able Senator from North Carolina (Mr. ERVIN). At the request of the majority leader, I wish to ask before the rollcall begins, whether there are any amendments to the drug bill, other than the amendment to be offered by the Senator from Missouri (Mr. EAGLETON). Apparently there will be none.

Mr. President, I ask unanimous consent that time on the amendment to be offered by the able Senator from Missouri (Mr. EAGLETON) immediately following the vote on the so-called no-knock amendment, be limited to 30 minutes, the time to be equally divided and controlled between the mover of the amendment (Mr. EAGLETON), and the manager of the bill, the Senator from Connecticut (Mr. DODD), that immediately following the vote on the Eagleton amendment, the bill be advanced to third reading, and that the time on the bill be limited to 20 minutes, to be equally divided between the manager of the bill, the Senator from Connecticut (Mr. DODD) and the ranking minority member, the Senator from Nebraska (Mr. HRUSKA), and that at the expiration of the 20 minutes, there be a vote on final passage.

Mr. CRANSTON. Mr. President, reserving the right to object, speaking on behalf of the Senator now presiding (Mr. HUGHES) he wishes to speak in connection with his amendment No. 1028.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on the amendment to be offered by the able Senator from Iowa (Mr. HUGHES) be limited to 10 minutes, to be equally divided between the author of the amendment and the manager of the bill.

Mr. HRUSKA. Mr. President, reserving the right to object, how many pages does the amendment have; what does the amendment consist of? We do not know whether it should be 5 minutes or 45 minutes. We have no information. We cannot make a judgment as to whether 5 minutes is ample or excessive.

Mr. MANSFIELD. Will the Senator consider 5 minutes?

Mr. HRUSKA. I do not know what the amendment is.

Mr. HUGHES. The amendment has been distributed. This is it.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent for 2 additional minutes.

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

Mr. BYRD of West Virginia. Mr. President, I wonder if we may get action on the unanimous-consent request excepting the amendment to be offered by the Senator from Iowa (Mr. HUGHES).

The PRESIDING OFFICER. Is there objection to the unanimous-consent request, eliminating the Hughes amendment? The Chair hears none, and it is so ordered.

The question is on agreeing to the amendment of the Senator from North Carolina. 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. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), 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 Georgia (Mr. RUSSELL), the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. SYMINGTON), 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 Georgia (Mr. TALMADGE), 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 Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Maine (Mr. MUSKIE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. FULBRIGHT), would each vote "yea."

I further announce that, if present and voting, the Senator from Missouri (Mr. SYMINGTON), would vote "nay."

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senators from New York (Mr. GOODELL and Mr. JAVITS), the Senator from California (Mr. MURPHY), the Senator from Kansas (Mr. PEARSON), 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 Utah (Mr. BENNETT), and the Senator from North Dakota (Mr. YOUNG) are detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT), the Senator from Kansas (Mr. PEARSON), and the Senator from Texas (Mr. TOWER) would each vote "nay."

On this vote, the Senator from New York (Mr. GOODELL) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from New York would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from New York (Mr. JAVITS) is paired with the Senator from California (Mr. MURPHY). If present and voting, the Senator from New York would vote "yea" and the Senator from California would vote "nay."

The result was announced—yeas 20, nays 42, as follows:

[No. 365 Leg.]

YEAS—20

Allen	Cranston	McGovern
Bayh	Ervin	Metcalf
Brooke	Hart	Mondale
Case	Hughes	Nelson
Church	Inouye	Ribicoff
Cook	Jackson	Stevens
Cooper	Mathias	

NAYS—42

Allott	Griffin	Packwood
Baker	Gurney	Pastore
Bible	Hansen	Pell
Boggs	Hatfield	Percy
Burdick	Holland	Proxmire
Byrd, W. Va.	Hollings	Randolph
Cotton	Hruska	Saxbe
Curtis	Jordan, Idaho	Schweiker
Dodd	Long	Scott
Dole	Magnuson	Smith, Maine
Dominick	Mansfield	Spong
Eagleton	McClellan	Thurmond
Eastland	McIntyre	Williams, N.J.
Ellender	Miller	Williams, Del.

NOT VOTING—38

Aiken	Harris	Prouty
Anderson	Hartke	Russell
Bellmon	Javits	Smith, Ill.
Bennett	Jordan, N.C.	Sparkman
Byrd, Va.	Kennedy	Stennis
Cannon	McCarthy	Symington
Fannin	McGee	Talmadge
Fong	Montoya	Tower
Fulbright	Moss	Tydings
Goldwater	Mundt	Yarborough
Goodell	Murphy	Young, N. Dak.
Gore	Muskie	Young, Ohio
Gravel	Pearson	

So Mr. ERVIN's amendment (No. 979) was rejected.

Mr. MANSFIELD. Mr. President, will the Chair recognize me before the Senator from Missouri?

The PRESIDING OFFICER. The Senator from Montana is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the amendment to be offered by the distinguished Senator from Missouri, debate on the amendment to be offered by the distinguished Senator from Iowa (Mr. MILLER) be limited to 5 minutes, the time to be equally divided between the manager of the bill and the Senator from Iowa.

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

Mr. HRUSKA. Mr. President, for the information of the Senate, there will not be a rollcall requested on that amendment. It is the intention of the Senator from Connecticut and this Senator to accept the amendment.

Mr. EAGLETON. Mr. President, I call up my amendments and ask for their immediate consideration en bloc.

Mr. MANSFIELD. Mr. President, will the Senator yield once more? I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. EAGLETON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. EAGLETON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. EAGLETON'S amendment is as follows:

Page 36, insert between lines 2 and 3 the following:

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

Page 36, strike out line 4 and all that follows down through and including line 15.

Page 36, line 16, strike out "(b)" and insert in lieu thereof "(a)".

Page 37, line 8, strike out "(c)" and insert in lieu thereof "(b)".

Page 37, line 9, strike out "(d)" and insert in lieu thereof "(c)".

Page 40, line 16, strike out "or (b)".

Page 131, line 9, strike out "or (b)".

Mr. EAGLETON. Mr. President——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. EAGLETON. We have 15 minutes to a side, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. EAGLETON. I yield myself 10 minutes.

Mr. DODD. Mr. President, will the Senator yield me 1 minute?

Mr. EAGLETON. I yield.

Mr. DODD. I am inclined to be in favor of this amendment of the Senator from Missouri. It was in our original bill last January, and I think it is a good amendment. I wonder if the Senator from Nebraska would concur, and we might save a lot of time here, in accepting them.

Mr. EAGLETON. Mr. President, I think the yeas and nays have already been ordered, and I would like a rollcall vote.

The PRESIDING OFFICER. The Senator can withdraw the yeas and nays by unanimous consent.

Mr. EAGLETON. That is all right, but we could save a lot of debate about it.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that a quorum call may be ordered, the time to be equally divided between the two sides.

Mr. EAGLETON. Mr. President, will the Senator withhold that request? I have yielded the Senator from Connecticut another 30 seconds.

Mr. BYRD of West Virginia. I withdraw the request.

Mr. DODD. Would the Senator from Missouri consider not having a rollcall vote on the amendments? We will accept his amendments and take it to conference. I am for his proposal; it was in my original bill, and I think they are good amendments. I will protect the Senator on it, and we could save some time.

Mr. EAGLETON. With all respect to the Senator from Connecticut, the yeas and nays have been ordered, and I would like a rollcall vote.

Mr. DODD. That does not mean we cannot dispense with the order.

Mr. EAGLETON. I think the rollcall can be expeditiously handled. I would like a rollcall vote on the amendment. I am willing to put my statement in the RECORD.

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. EAGLETON. Mr. President, I yield myself 8 minutes.

This amendment would change the classification of amphetamines and amphetamine-like substances to schedule II, rather than schedule III as approved by the House. The net effect of this amendment would be the tightening of controls on these drugs—commonly referred to as "pep pills" and "speed."

Testimony before Representative PEPPER'S Select Committee on Crime in the House of Representatives indicated that there is a pressing need for stricter controls of these substances. The following facts were presented, for example:

Eight billion dosage units of amphetamines are produced in this country each year—enough for 40 doses for every man, woman, and child in the United States.

The legitimate medical need in this country for amphetamines is only in the thousands of dosage units.

There are, in fact, only two noncontroversial medical uses for these drugs—treatment of hyperkinetic children, and narcolepsy, which, in laymen's language, is a very rare type of sleeping sickness. A third possible use under FDA regulations is their short-term use—and I emphasize short-term use—for weight reduction.

Over 50 percent of the "legally" manufactured amphetamines in the United States are diverted into illegal channels—and, according to the report of the House Interstate and Foreign Commerce Committee on H.R. 18583, this extraordinarily high diversion rate has continued for at least 5 years.

Eighty percent of the Federal Bureau of Narcotics and Dangerous Drugs amphetamine seizures in 1968 were originally "legally" manufactured.

Drug companies have not voluntarily curtailed production.

The street term for high dosage amphetamine use is "speed." Each injection causes euphoria and hyperactivity. The only limitation on the length of the user's trip is when—because of exhaustion—he is forced to "come down." It is at this point that the paranoid reaction or other personality disorder is accentuated. The user often has been known to attack other persons or cause serious injury to himself.

Other harmful side effects are hepatitis, malnutrition, and the undermining of the individual's health due to irregular sleeping and eating patterns. There are also numerous recorded cases of permanent brain damage, damage to unborn children, and even death.

And most disturbing of all—the use of "speed" is on the increase, even down to the grade school level.

I would point out that this amendment is not intended to protect only the so-called speed freaks. Proper controls on these substances will also cut back on abuse by the weight-conscious housewife, the weary long-haul truckdriver, and the young student trying to study all night for his exams.

Section 306(a) of the House-passed drug bill provides that:

The Attorney General shall determine the total quantity and establish quotas for each basic class of controlled substance in Schedules I and II to be manufactured in each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.

I invite the attention of my colleagues to the language of this section to point out that the Attorney General is directly to set quotas only for schedule I and II substances. If my amendment is rejected, amphetamines—as class III substances—would be exempt from manufacturing quotas. The over-production and diverting in great quantity of these substances to illegal use would most certainly continue.

In addition to requiring manufacturing quotas for amphetamines, this amendment would have other effects, as well—all designed to more strictly control the manufacture and distribution of these "speed" drugs.

First, moving amphetamine-like substances up to schedule II would make it illegal for any person to distribute these drugs without a written order issued by the Attorney General. These written orders are already required for all narcotic drugs distributed in this country. And this procedure had reduced the diversion of legally produced narcotics into illegal channels to an irreducible minimum.

Second, under my amendment, amphetamines could only be dispensed by a physician with a written prescription—and a doctors permission would be required for a refill of the prescription. The bill as passed by the House allows for "speed" prescriptions good for 6 months and refillable up to five times.

Finally, my amendment would tighten the import and export restrictions on amphetamine-like substances. It would become illegal to import amphetamines unless the Attorney General found it necessary to provide for the medical, scientific, or other legitimate needs of the country. Compare that to the House-passed provision whereby an unlimited quantity of speed can be imported, subject only to the requirement that the importer notify the Attorney General that he intends to do so.

With regard to the exporting of am-

phetamines, my amendment would permit exporting only when a permit has been issued by the Attorney General. This would prevent, for example, the continuation of the current practice whereby vast quantities of "speed pills are being shipped to Tijuana, Mexicali, and other Mexican border towns—and then smuggled back across the border to be sold on the streets of our Western cities.

I want to point out that this amendment has the support of the American Psychiatric Association, the American Public Health Association, and the National Association of Secondary School Principals.

If we are committed to facing the drug abuse problem head on, let us face the fact that a large part of this problem relates to the use of "speed." It is no answer to say that we should let the Attorney General look into this Schedule change under his rule-making authority. We know now—we know this very minute, we know this very night—that these drugs are dangerous—that "speed" kills. We know now that they are abused. We know now that stricter controls are necessary.

I appeal to my colleagues to join me in support of this amendment.

I yield 3 minutes to the Senator from New Hampshire.

LET'S SLOW DOWN "SPEED"

Mr. McINTYRE. Mr. President, I rise to support the amendment offered by the distinguished Senator from Missouri (Mr. EAGLETON). I believe this proposal is important to deliberations here and its passage is a vital factor in the better control of drugs.

This amendment would put tighter controls on amphetamines. Amphetamines have a place in health care. They are useful in the treatment of narcolepsy, a rare sleeping sickness and they have some usefulness in the treatment of obesity.

There is some misuse of amphetamines to stay awake while driving, to stay awake to study for an exam, to excel in an athletic contest. This sort of misuse is sometimes dangerous but it is not the real problem which exists with amphetamines.

Mr. President, the real abuse is the misuse that is being made with this drug is the swallowing of handfuls of the pills, the so-called snorting of the drug in powder form, or its injection in the vein in the form of a solution. Experts say that the progression of use is from swallowing, to sniffing, to intravenous injection. The drug most frequently used in this country for this purpose is methamphetamine—speed, crystal, and meth.

Experts also report that the continued use of amphetamines in large doses is physically addicting, meaning that tolerance builds up and definite withdrawal symptoms occur when the drug is discontinued.

There are many examples of the horror of misuse of amphetamine. The user faces panic, paranoid states, malnutrition, prolonged nervous breakdowns. Infections occur in many instances. It has even been demonstrated in animals that prolonged use of the amphetamines over a long period of time may lead to brain cell damages.

Representative CLAUDE PEPPER, of Florida, who has done such a brilliant job of studying drugs as part of his work as chairman of the Select Committee on Crime in the House of Representatives, reported recently:

In our hearings in San Francisco, there were 13 bins of amphetamines somewhat like Benzedrine, as I recall, that had 1,200,000 of these pills in the bins, and they were consigned by a manufacturer in Chicago to a consignee in Tijuana, Mexico. The Federal Bureau of Narcotics and Dangerous Drugs acting on information furnished by our committee staff checked up on it, and they found that the address of the so-called consignee was the 11th hole of the golf course in Tijuana and that a customs broker had diverted these amphetamines at the border into the black market.

This kind of example makes it clear that existing controls such as now practiced are inadequate. It is evident that the present system of controls places the major risk, pain, and financial burden of amphetamines directly on the consumer.

In addition, those who do not use drugs must be taxed to control the social disruption resulting from this drug abuse.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a letter which Representative PEPPER received from the American Psychiatric Association, the 18,000-member group representing the professional medical manpower of the Nation because this letter so clearly points to drastic need for amphetamine control as expressed by this organization of dedicated experts.

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

(See exhibit 1.)

Mr. McINTYRE. Mr. President, the amendment which the Senator from Missouri has offered and which I support would move amphetamines from schedule 3 to schedule 2 of drug control. It would allow us to control imports of amphetamines. It would prohibit the refilling of amphetamine prescriptions without the doctor's personal approval. It would put other restrictions on this dangerous drug and provide the same control over amphetamines that we have over narcotics.

This is the least we can do I think as one further part of our effort to bring about better control of drug abuse in our Nation. I hope my colleagues will join with the Senator from Missouri as I have in taking this important action.

EXHIBIT 1

AMERICAN PSYCHIATRIC ASSOCIATION,
Washington, D.C., September 22, 1970.

Hon. CLAUDE PEPPER,
Chairman, Select Committee on Crime, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The American Psychiatric Association, whose 18,000 members represent the primary professional medical manpower for the treatment of the mentally ill in our country, shares with the Select Committee on Crime of the United States House of Representatives its grave concern over the abuse of the family of amphetamine drugs.

It is clear that mental health problems of varying magnitudes can occur with the abuse of these drugs, and that there are serious indications in our society of a high incidence of abuse.

Hallucinations and acute psychoses have been observed in those who have taken overdoses or who have indulged for prolonged periods. The greater danger lies principally in the use of methamphetamines by parenteral intravenous injections. Nevertheless, it is evident that even the intermittent use of the drug in average doses may impair the ability to make complex judgments and fine discriminations.

It is acknowledged that the bona fide medical therapeutic use of the drug is limited to the treatment of narcolepsy, hyperkinesia, mild depression, and as starter doses for obesity.

Our Association agrees that stricter controls on the production and distribution of these drugs, consistent with the legitimate medical, scientific, industrial, and other needs of this country, might be a step forward in combatting what is seen by many as the advent of a special problem area in the kaleidoscopic picture of drug abuse in our nation.

However, we firmly believe that if drugs in general are to be classified into schedules by the federal government according to their potential for abuse, currently accepted medical use, and degree of physical and/or psychological dependence, that the final decision for scheduling must logically be made by medical authority, such as that of the Department of Health, Education and Welfare, rather than by the Department of Justice to whom we look to enforce our laws.

Therefore, we agree in principle with the findings of your distinguished committee that the unlimited manufacture and lax distribution of these drugs foster a situation which can only be deleterious to the public interest of our country and its citizens.

With best personal regards, I am,

Respectfully yours,

ROBERT S. GARBER, M.D.,
President, American Psychiatric Association.

Mr. EAGLETON, I reserve the remainder of my itme.

Mr. HRUSKA. Mr. President, will the Senator yield me 5 minutes?

Mr. DODD. I yield 5 minutes to the distinguished Senator from Nebraska.

Mr. HRUSKA. Mr. President, this amendment would seek to transfer from schedule III between 4,000 and 6,000 products of the amphetamine family. Some of them are very dangerous. They are very harmful, and some should be transferred from schedule III to schedule II. But a procedure is set up in this bill, an administrative procedure, whereby the parties who are involved and the public are given a chance to come in and make a showing with reference to reclassification of these drugs, any of these items, so that they may be upgraded.

The decision of the Attorney General, if that administrative proceeding is resorted to, is final and conclusive as to its going into effect. The parties can appeal if they want to, but in the meantime the transfer is made from schedule III to schedule II.

What is involved here is whether we, as a legislative body, would seek to substitute our judgment for the HEW's professional judgment on an extremely complex scientific issue. In the other body, Dr. Egeberg was asked by Mr. STAGGERS to present HEW's professional judgment on the drug classifications

provisions of H.R. 18583; and after reviewing the scheduled criteria and the schedules themselves, Dr. Egeberg advised the committee that the Department of Health, Education, and Welfare found them "substantially acceptable" except for a few minor points. What is important in Dr. Egeberg's letter is its implicit approval of the drug abuse bill's classification of amphetamines in schedule III.

The administration is opposed to this amendment, and for a very solid reason. All the people who are producing or distributing between 4,000 and 6,000 items will be thrown into the same category as this particularly harmful drug—"speed"—which is the methamphetamine to which reference has been made.

The Director of the Bureau of Narcotics and Dangerous Drugs has pledged that there will be a quick review of the situation in the light of the vast studies which have already been made, the administrative procedure will be resorted to, and in the case of these obviously and patently dangerous drugs a decision will be made soon.

It is submitted that we should not impose our judgment on a complex scientific issue of this kind but should leave it to the regular functioning of the administrative procedures which we are setting up. A judicial review can be asked, but in the meantime the change is made from one schedule to the other, regardless of the other, so the appeal would have to be upheld before there would be a reordering of procedures.

In a letter dated September 15, addressed to Representative CLAUDE PEPPER, of Florida, this is what the Director of the Bureau of Narcotics and Dangerous Drugs said. I will read excerpts from it, and I ask unanimous consent that at the conclusion of my remarks the entire letter be printed in the RECORD.

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

(See exhibit 1.)

Mr. HRUSKA. I read an excerpt from the letter:

As you are aware, this matter has been under considerable review by the Bureau of Narcotics and Dangerous Drugs and the Food and Drug Administration for the past year.

H.R. 18583 will permit the Federal government to move drugs in schedule III, which includes the amphetamines, into schedule II and impose quotas on them. At the present time it is the intention of the Bureau of Narcotics and Dangerous Drugs to move some of the amphetamines, particularly the methamphetamines, into schedule II via the new streamlined administrative procedures of H.R. 18583. This will afford the manufacturers of those products the right to present their case at that time. However, it should be noted that it is not the intention of the Bureau, at this time, to move all the amphetamines under the quota requirements of schedule II since we are still in the process of gathering all the information on these myriad drugs and their combinations.

It is the Bureau's position that the rampant abuse of amphetamines, particularly methamphetamines, is creating a serious public health and law enforcement problem in the United States. You can be assured that the Bureau does anticipate utilizing the new provisions of H.R. 18583 to insure that the proper regulatory controls are imposed over those amphetamines found to require the imposition of quotas.

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

Mr. HRUSKA. Will the Senator yield me 2 additional minutes?

Mr. DODD. I yield 2 additional minutes to the Senator.

Mr. HRUSKA. Mr. President, it seems to me that when we are setting up an orderly and expeditious procedure for the purpose of handling all these things, we should resort to it. It is modern; it is not subject to abuse by long court delays; it will be more fair to those amphetamines in this list which are not that dangerous, which may have some use; and it should be allowed to proceed on that basis.

If the Attorney General wants to, he can temporarily move certain of the dangerous drugs from schedule III to schedule II immediately, pending the findings of the administrative hearing. That is what Mr. Ingersoll, Director of the Bureau, indicates. It is our hope that we will proceed on this by way of law, by way of orderly procedure, well calculated to the ends we seek to achieve and not try to legislate in a hammer and tongs way to put wisdom in the bill on a subject which is so very, very intricate.

It is the hope of this Senator, and I speak on behalf of the Bureau and on behalf of those who support my position, that the amendment will be rejected. In the other body such an amendment was proposed, and it was rejected.

EXHIBIT 1

SEPTEMBER 15, 1970.

Mr. CLAUDE PEPPER,
Chairman, Select Committee on Crime, House of Representatives, Congress of the United States, Washington, D.C.

DEAR MR. PEPPER: Thank you for your letter of September 3, 1970, relating to your prospective amendment regarding the classification of amphetamines in schedule II as opposed to schedule III in H.R. 18583. As you are aware, this matter has been under considerable review by the Bureau of Narcotics and Dangerous Drugs and the Food and Drug Administration for the past year.

H.R. 18583 will permit the Federal government to move drugs in schedule III, which includes the amphetamines, into schedule II and impose quotas on them. At the present time it is the intention of the Bureau of Narcotics and Dangerous Drugs to move some of the amphetamines, particularly the methamphetamines, into schedule II via the new streamlined administrative procedures of H.R. 18583. This will afford the manufacturers of those products the right to present their case at that time. However, it should be noted that it is not the intention of the Bureau, at this time, to move all the amphetamines under the quota requirements of schedule II since we are still in the process of gathering all the information on these myriad drugs and their combinations.

It is the Bureau's position that the rampant abuse of amphetamines, particularly methamphetamines, is creating a serious public health and law enforcement problem in the United States. You can be assured that the Bureau does anticipate utilizing the new provisions of H.R. 18583 to insure that the proper regulatory controls are imposed over those amphetamines found to require the imposition of quotas.

Sincerely,

JOHN E. INGERSOLL,
Director.

Mr. EAGLETON. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER (Mr. CURTIS). The Senator from Missouri is recognized.

Mr. EAGLETON. Mr. President, I should like to respond to the arguments which the Senator from Nebraska (Mr. HRUSKA) has just made.

First, he mentions that there are 4,000 to 6,000 types of amphetamines. But that number includes a large number of products of the same general substance, manufactured under a multitude of brand names—brands X, Y, Z, and what have you.

We are actually talking about only four drug manufacturers who are making these dangerous items.

I want to place their names in the RECORD at this point:

Arenol Products Corp., Long Island City, N.Y.

Hexagon Laboratories, Inc., Bronx, N.Y.

Roehr Chemicals, Inc., Long Island City, N.Y.

Smith Kine & French Laboratories, Long Island City, N.Y.

Mr. President, these four manufacturers can be easily and quickly controlled if these drugs come under the schedule II regulations.

Second, the Senator from Nebraska says there is a procedure for upgrading drugs to schedule II. There is. It is the same procedure whereby drug companies and others who seek redress can have them downgraded to title III. It goes both ways. But in terms of a quick review, it is estimated that it would take from 3 to 5 years for the Attorney General to upgrade an item from schedule III to schedule II. We have to consider that there will be delays in the rulemaking process, followed by a time-consuming judicial review procedure. At this point, there is a backlog of cases in the courts of up to 3 years.

Finally, the Senator from Nebraska quotes a letter from Dr. Egeberg of the Department of Health, Education, and Welfare.

I, too, would like to quote a letter from the Department of Health, Education, and Welfare, from the Surgeon General of the United States, addressed to Mr. CLAUDE PEPPER, dated March 2, 1970.

It reads in part:

Considerable research on the effects of amphetamines has been accomplished at the NIMH Addiction Research Center at Lexington, Kentucky. The Center has found that methamphetamine and dextroamphetamine have approximately the same order of abuse potential. Other amphetamines and related stimulants have a somewhat lesser abuse potential but of a degree serious enough to warrant the same degree of regulation under law.

Mr. President, I repeat what I said in my opening remarks—speed kills. Aside from the fact that amphetamines can be used in the treatment of a limited number of diseases, billions of speed pills are being manufactured by the big four manufacturers whose names I have placed in the RECORD. And these items are being sold with reckless abandon to the public detriment. I believe that this situation constitutes a clear and present danger to the public health of the Nation.

The burden should be placed on the four manufacturers to have their products downgraded to schedule III, if they can carry that burden.

I do not believe that they cannot carry that burden. They are making dangerous products. There is no control over their dissemination or distribution. These companies are making money out of the misery of many individuals. We know the facts. We know them now.

I respectfully commend my amendment to the attention and approval of the Senate.

Mr. DODD. Mr. President, as I said earlier, I have spoken for the Senator's amendment, but I am worried about it. I am disposed to be for it, but what troubles me is that while *this is* a useful drug for medicine, it also has, like so many other useful drugs, great capacity for harm. Because it has, I believe it should be strictly controlled.

That is my case. That is all there is to it.

The Senator from Missouri has made a good case for his amendment.

I understand what my colleague from Nebraska on the other side of the aisle is arguing for. However, I believe that we should do this with stricter controls, as we do with many other good drugs which, if abused, can cause widespread harm.

Mr. PASTORE. Mr. President, do I correctly understand the Senator from Connecticut to say that he is for the amendment?

Mr. DODD. Yes, I am.

Mr. PASTORE. I want to thank the Senator from Connecticut.

Mr. HRUSKA. Mr. President, we have heard remarks about the horrible dangers and harm that can come from these drugs. If it is apparent to anyone not knowledgeable in the scientific complexities of this issue, as most of us here in this Chamber are not, is it not reasonable to suppose that the Attorney General and the Director of Narcotics and Dangerous Drugs and the Secretary of Health, Education, and Welfare are similarly possessed of that knowledge and conviction? More so. They are charged specifically with the responsibility of the classifications and this specialty. It is therefore my suggestion that we defer to their superior knowledge rather than depending on our own limited knowledge of the subject.

Mr. DODD. I understand what the Senator suggests. The hazard is so great that, if it is found not to be as dangerous as the Senator says, then the Attorney General could easily declassify it. It will not be any great task to do that.

Mr. HRUSKA. But the effect of the amendment would be to take these 4,000 to 6,000 items and place them on schedule III not schedule II, imposing quotas on them and, of course, other stricter controls that would come under schedule II.

Mr. DODD. Would it not be wiser to be on the safe side?

Mr. HRUSKA. There are many of these items that are not harmful, yet they will be considered harmful. That is the point.

Mr. DODD. If they are not harmful, people will not suffer. Only the big powerful manufacturers of these pills may find a reduction in their profit. The people will not be harmed.

Mr. HRUSKA. I am not interested in whether it would be harmful to the manufacturers.

Mr. DODD. Of course. But the little people of the country should be protected. Let us put the controls on and find out more about it. If there is evidence that they are not damaging to people, then we can remedy the situation.

Mr. HRUSKA. I refer again to what the Director of the Bureau said. It seems to me it makes good sense.

The PRESIDING OFFICER (Mr. CURTIS). Does the Senator from Nebraska yield back his time?

Mr. HRUSKA. I yield back the remainder of my time.

Mr. DODD. Mr. President, I yield back the remainder of my time, but, Mr. President, I should like my colleague and friend from Nebraska, who has been in the forefront of this debate, to understand that I am sympathetic to his point of view. I understand what he is trying to say. However, I honestly believe that we should have stricter controls, and if we find we have too tight it is easier to relax them than to tighten them up still further.

The PRESIDING OFFICER. (Mr. CURTIS). All time on the amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Missouri (Mr. EAGLETON).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Florida (Mr. HOLLAND), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. RUSSELL), the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. SYMINGTON), 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 Georgia (Mr. TALMADGE), 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 Maine (Mr. MUSKIE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Florida (Mr. HOLLAND), and the Senator from Massachusetts (Mr. KENNEDY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senators from New York (Mr. GOODELL and Mr. JAVITS), the Senator from Kansas (Mr. PEARSON), 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 Utah (Mr. BENNETT) and the Senator from North Dakota (Mr. YOUNG) are detained on official business.

If present and voting, the Senator from California (Mr. MURPHY) and the Senator from Kansas (Mr. PEARSON) would each vote "yea."

On this vote, the Senator from New York (Mr. GOODELL) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from New York would vote "yea" and the Senator from South Dakota would vote "nay."

On this vote, the Senator from Illinois (Mr. SMITH) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Illinois would vote "yea" and the Senator from Texas would vote "nay."

The result was announced—yeas 40, nays 16, as follows:

[No. 366 Leg.]

YEAS—40

Allen	Ervin	Packwood
Bayh	Hart	Pastore
Bible	Hatfield	Pell
Brooke	Hollings	Percy
Burdick	Hughes	Proxmire
Byrd, W. Va.	Inouye	Randolph
Church	Jackson	Ribicoff
Cook	Magnuson	Schweiker
Cooper	Mansfield	Scott
Cotton	McGovern	Spong
Dodd	McIntyre	Stevens
Dole	Metcalf	Williams, N.J.
Eagleton	Miller	
Ellender	Nelson	

NAYS—16

Allott	Griffin	Saxbe
Baker	Gurney	Smith, Maine
Boggs	Hansen	Thurmond
Case	Hruska	Williams, Del.
Curtis	Jordan, Idaho	
Dominick	Mathias	

NOT VOTING—44

Aiken	Harris	Muskie
Anderson	Hartke	Pearson
Bellmon	Holland	Prouty
Bennett	Javits	Russell
Byrd, Va.	Jordan, N.C.	Smith, Ill.
Cannon	Kennedy	Sparkman
Cranston	Long	Stennis
Eastland	McCarthy	Symington
Fannin	McClellan	Talmadge
Fong	McGee	Tower
Fulbright	Mondale	Tydings
Goldwater	Montoya	Yarborough
Goodell	Moss	Young, N. Dak.
Gore	Mundt	Young, Ohio
Gravel	Murphy	

So Mr. EAGLETON's amendments were agreed to.

Mr. EAGLETON. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. McINTYRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1028

Mr. HUGHES. Mr. President, I call up my amendment No. 1028 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HUGHES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and that the amendment be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 64, between lines 17 and 18, insert the following:

"(4) Any person who, in violation of this Act, distributes a small amount of marihuana for no remuneration shall be subject to the penalties provided in section 404 of this title."

Mr. HUGHES. Mr. President, I ask unanimous consent that the names of the Senator from New York (Mr. JAVITS), the Senator from Colorado (Mr. DOMINICK), and the Senator from Massachusetts (Mr. KENNEDY) be added as cosponors of this amendemnt.

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

Mr. HUGHES. Mr. President, I ask unanimous consent to have printed in the RECORD a statement that would have been made by the Senator from Massachusetts (Mr. KENNEDY) had he been able to be present this evening.

There being no objection, the statement of Senator KENNEDY was ordered to be printed in the RECORD, as follows:

PENALTIES FOR DISTRIBUTION OF A SMALL QUANTITY OF MARIHUANA WITHOUT REMUNERATION

Mr. KENNEDY. Mr. President, this amendment would provide that persons who distribute a small quantity of marihuana, without sale or remuneration, would be subject to the penalties for possession, rather than the heavier penalties for manufacture and heavy trafficking. Passage of the amendment would make the bill more equitable and more responsive to the situation of our nation's young people.

Many youngsters may be in a situation where they are with friends, where they give a marihuana cigarette or a small quantity of marihuana to one or two others—not as professional pushers, not to make a profit, but in a casual and informal way.

It would be an unrealistic overeaction to treat persons convicted of such activity in the same way as large-scale pushers of heroin are treated. Yet that is the effect of the bill at the present time.

Persons so convicted would be subject to five years in jail and a fine of up to $15,000 for the first offense. They would not be eligible for the provision in the possession section whereby the court may put an offender on probation for one year and then, in its discretion, strike the guilty finding from his record so that he is not restricted for life as a result of his marihuana offense as a youth.

An estimated 12–20 million Americans have tried marihuana. In hearings which I chaired last spring at a Massachusetts high school, the president of the senior class testified that an estimated 50–60% of the students have tried marihuana.

This is a widespread phenomenon. We must respond with compassion and understanding and try to correct it in a reasonable fashion.

I am opposed to the legalization of marihuana. I do not believe that society should have another legal intoxicant, besides alcohol. I believe, however, that we must pursue vigorously the studies called for in this bill and presently underway on the likely effects if marihuana were legalized.

But in the meantime, we aso should not penalize a whole generation of young persons who are growing up fully exposed, fully tempted by the mysteries of the drug culture. We should not brand them for life for the lesser marihuana violations.

Therefore, I urge my colleagues to vote for this amendment.

Mr. HUGHES. Mr. President, this amendment has been accepted by the managers of the bill.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HUGHES. Mr. President, this amendment is an amendment that was passed by the Senate last January in the original Senate-passed bill. It would make those persons who are guilty of distributing marihuana for no remuneration subject to the same penalties as those persons who are charged with possession, rather than subject to penalties for trafficking and distribution.

The penalty for first offense possession is up to 1 year, up to $5,000 or both; second and subsequent offenses are double this.

The penalty for first offense trafficking or distribution is up to 5 years, up to $15,000 or both, and a special parole term of 2 years; second and subsequent offenses are double this.

Also, if a person at least 18 years old distributes to a person under 21, any penalty for distribution is doubled.

Trafficking provisions should apply to the large distributor, rather than to the person who is only using the drug with his friends. The latter individual falls within the intention of the possession provisions.

A provision very similar to this was adopted by the Senate as section 501(c)(4) of S. 3246, the Controlled Dangerous Substances Act of 1969, when it passed the Senate earlier this year.

Mr. President, this amendment would place those persons who are guilty of distributing marihuana for no remuneration in the same category as those persons who are charged with possession. The amendment refers to those persons who have small amounts of marihuana or smoke it with friends. They would be subject to the same penalties as those persons charged with possession rather than subject to penalties for trafficking and distribution.

Mr. DODD. Mr. President, I believe we should accept the amendment. This is a compassionate amendment, and it is in keeping with the bill we passed in January. I commend the Senator for offering the amendment. I believe it should be agreed to.

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

Mr. HUGHES. I yield.

Mr. HRUSKA. Mr. President, I concur with the Senator from Connecticut. The objective of the amendment is good. It had been discussed in committee and was considered. Legalistically it may present some difficulty because of the definition of the word "small." But it is an amendment to which I have no objection, and I join the Senator from Connecticut in accepting it.

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

The PRESIDING OFFICER (Mr. HANSEN). The time of the Senator has expired.

Mr. HRUSKA. Mr. President, I yield the Senator from Colorado 1 minute.

Mr. DOMINICK. Mr. President, there are a great number of young people who have been experimenting with marihuna. It has not proven to be something to which they are addictive or that would ruin their health. Unless we do something about decreasing the penalties, as suggested by the Senator from Iowa, I think we are further increasing the problems of credibility of the Government as far as young people are concerned.

I support the amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD a preliminary report on marihuana and health by the Department of Health, Education, and Welfare.

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

MARIHUANA AND HEALTH—A PRELIMINARY REPORT

INTRODUCTION

The "Marihuana and Health Reporting Act" (Title V of P.L. 91–296) requires the submission by the Secretary of Health, Education and Welfare of a preliminary report on the health consequences of marihuana usage.

This report summarizes the present state of research development concerned with the health consequences of marihuana use upon which future investigations and more definitive findings may be based. "Health consequences" for the purpose of this report are defined as drug effects on the individual's physical and psychological health including his social and vocational adjustment. Further the report summarizes steps taken to foster responsible drug abuse education.

THE PROBLEM AND THE CONTROVERSY

Marihuana is among the oldest and most widely used drugs. The earliest record of man's use of marihuana is a description of the drug in a Chinese compendium of medicines, the Herbal of Emperor Shen Nung, dated 2737 B.C. Marihuana was a subject of extravagant social controversy even in ancient times. It has been eaten and drunk, snuffed and smoked since then by unrecorded numbers, and currently is used throughout the world by hundreds of millions of people. Nevertheless, opposing and divergent opinions about whether the effects of usage are harmful, harmless or beneficial to human functioning remain unresolved.

Current knowledge concerning the health consequences of marihuana use is controversial, contradictory, fragmentary, with

major gaps. In the Interim Report of the Commission of Inquiry into the Non-Medical Use of Drugs, April 1970, by a Canadian Government group, the following statement regarding the current state of knowledge was made:

"Although the current world literature in cannabis numbers some 2000 publications, few of these papers meet modern standards of scientific investigation. They are often ill-documented and ambiguous, emotion-laden and incredibly biased, and can, in general be relied upon for very little valid information. Scientific expertise in the area of cannabis is limited by the simple fact that there is little clearly established scientific information available, and preconceived notions often dominate the interpretation of ambiguous data."

This preliminary report does not try to summarize present knowledge on marihuana and health, which will be presented in a more complete submission next January. However, it does indicate the reasons why the controversy on marihuana has not yet been resolved, outlines the steps presently being taken to generate data in marihuana research, and indicates areas to be programmed for future necessary research.

Certain questions are of paramount importance in regard to the health consequences of marihuana use. These are:

1. What are the acute and chronic physical, psychological and psychosocial effects of the drug itself when used by physically and emotionally normal, healthy individuals? How are these effects modified in individuals whose physical and/or mental health is other than optimum?

2. What are the implications for our society of increasing marihuana use?

Why are these questions unanswered at present after such a long worldwide experience with this substance? The reason involves the unusual complexities of the interactions of the drug, the people who use it and the society in which it is used.

Prior to 1967, little marihuana research meeting high standards of scientific reliability was carried out for socio-political as well as scientific reasons. This was especially true of adequately reproducible work involving the pharmacology of the substance and its physiological effects.

For many years, the illegality of marihuana discouraged research in the United States. Although possession of marihuana for research was permitted in theory, the requirements to be met in order to obtain materials and to do research were formidable. In addition, neither the medical profession nor the pharmaceutical industry could see much therapeutic value to the drug and hence commercial potential in studying it. As a consequence, research on marihuana has been and continues to be primarily supported by the government or carried out under university auspices. Since 1967, 42 clinical studies have been initiated on marihuana or related products. The plans for the studies were reviewed jointly by the Food and Drug Administration and the National Institute of Mental Health of this Department.

The Department of Defense because of an interest in chemical warfare agents has done some marihuana-related research. The data accumulated through this program has only recently become available on an unclassified basis. The work involved was done on related synthetic compounds, not on marihuana itself. It therefore has only peripheral relevance to the problem.

MARIHUANA—CHARACTERISTICS OF THE DRUG ITSELF

Along with other research obstacles, marihuana investigation has been slow to generate adequately reproducible research findings because of the complexity and diversity of forms of the material itself. Marihuana and related natural materials such as the concentrated resin, hashish, are all products of the hemp plant, *Cannabis sativa*. Its principal commercial use is in the production of rope and bird seed. The plant is an annual which grows readily either cultivated or as a weed throughout much of the world, including the entire United States. *Cannabis* plants occur in both a male and female form. Contrary to prior belief, both contain psychoactive material. However, the female plant is bushier and its flowering tops secrete the clear, varnish-like concentrated resin called hashish that contains the most potent psychoactive material. The small leaves or bracts surrounding the female flowers are more potent in terms of active constituents than the lower leaves, while the seeds, roots and stems are not psychoactive. Thus, various types of preparations of *Cannabis* such as charas, ganja and bhang in India, kif and dagga in North and South Africa, are available for use and vary in pharmacological potency. The two *Cannabis* preparations most commonly used in the United States are native or imported marihuana and imported hashish.

It is known that psychoactive potency varies considerably with different *Cannabis sativa* specimens and drug users prefer certain sources of marihuana, identified by such names as "Panama Red, Texas Black, Acapulco Gold, and Vietnam Red." Recent evidence from the research program of the Department of Health, Education, and Welfare has demonstrated that potency of *Cannabis* plants is determined genetically, and to a lesser extent by soil and climate where grown. The parts of the plant used are also important. If more bracts are included, for example, the sample has a higher potency. Inclusion of stems and other non-active parts results in a less potent mixture. While most plants cultivated in Europe and the United States have been chosen for their fiber production, it is also possible to produce plant forms with very high drug content.

The absence, until recently, of objective measures correlating psychoactive potency of the sample being studied with its chemical composition has resulted in considerable ambiguity in interpretation of studies of *Cannabis*. Prior to 1966, researchers used either crude marihuana (often confiscated material of unknown origin and stored for varying lengths of time) or extracts from it, notably variable in composition. It was not until 1964 that the major active component in *Cannabis*, the Delta-9-1-transtetrahydrocannabinol (Delta-9-THC; also sometimes called Delta-1-THC) was isolated in a pure form and its structure finally defined.

In the last few years, intensive chemical investigations sponsored by this Department have considerably clarified the rather complex chemistry of marihuana's active components. The principal natural cannabinoids have now been isolated and their structures elucidated but their biological activities are still little known. Their apparent lack of psycho-activity has resulted in lesser research interest in them.

At the same time, the Department through its National Institute of Mental Health, began a program for growing marihuana in the United States under well-defined conditions to obtain a standard product of *reliable composition* and known horticultural history. Seeds from various localities in the United States and abroad have been collected and grown; the plants are processed under standard conditions. The effects of age, exposure to light and/or different temperatures, soil conditions, etc., have been investigated. Analytical methods (gas chromatography and/or thin layer chromatography) have been developed which allow quantitative as well as qualitative determination of cannabinoids.

The Department has also supported research and development for production of the tetrahydrocannabinols (THCs) by chemical synthesis, since extraction of these compounds from the natural plant is both time consuming and produces low yields. Synthesized and natural materials are now distributed to qualified investigators free of cost as an important means of encouraging more adequate research. Natural materials are now being employed in a wide range of animal and human studies designed to elucidate their physical and psychological effects. Results of this work, still in progress, are for the most part not yet available. The synthetic materials are now being tested in animals prior to human studies.

It should be emphasized that there is considerable variability in the potency of different forms of marihuana and related material. The potency of some of the Department's cultivated material has been as much as seventy times as great in very potent samples as in other, less potent material. The way in which the plant material is processed (e.g. how much of the most psychoactive parts are found in any given mixture) makes a considerable difference. It should be emphasized that American experience has been largely limited to weaker materials with considerable question as to the implications that general availability of strong material might have. Hashish, the concentrated resin, is from five to ten times more potent than the more typically available plant mixture sold illicitly. The percentage of psychoactive ingredient may range from as low as a fiftieth of one percent to as high as 8 percent (four hundred times as potent) for high quality hashish. The tendency of marihuana preparations to deteriorate in potency over time depending on storage conditions also contributes to the variability.

Better understanding of the chemistry of the drug and the ready availability of supplies of uniform type for research has made possible a greatly expanded program of research into the pharmacological and clinical properties of natural and synthetic forms of the drug. It should be emphasized that so-called Delta-9-THC, while presumably the major psychoactive ingredient of marihuana is by no means the only one. Other compounds almost certainly also play a role (Delta-8-THC which occurs naturally in smaller amounts is also known to be psychoactive).

METHODS OF CONSUMPTION

While in the United States marihuana is typically smoked in cigarettes or pipes, this is by no means the only means of consumption possible. It can be ingested as food or drink. Generally, it requires significantly larger amounts of the drug to produce the same effects when ingested rather than smoked. It may be that the process of smoking in itself (which involves high temperature combustion) results in significant chemical changes. The nature of these changes is currently being studied because of the obvious need for further clarification. Because little time elapses between smoking marihuana and feeling its effects (a matter of minutes) it is generally easier for the smoker to control his intake so as to insure a desired level of "high." When ingested, however, effects may be delayed for several hours and are more difficult for the user to control. Given a highly variable material the chances of consuming a larger quantity than intended is probably greater when marihuana is eaten with potentially unpleasant consequences.

PHARMACOLOGICAL CLASSIFICATION

Marihuana is not a narcotic. Neither is it primarily a stimulant, sedative, tranquilizer or hallucinogen, although it shares some properties with each of these. At the same time, it lacks many of their other properties. In small doses it produces stimulation followed by sedation. In high doses it acts as a hallucinogen and can produce subjective changes somewhat resembling those of small

amounts of LSD. Unlike many drugs (e.g., opiates and amphetamines) which require increasingly higher dosages over time to produce the same effect, marihuana users frequently report that with repeated use smaller doses produce the original effects. The apparent rapid disappearance from the blood of such substances as Delta-9-THC and Delta-8-THC following their injection indicates that they are rapidly transformed into other compounds. This change is a stumbling block to easily developing measures of the amount of pharmacologically active material in the blood stream or other body fluids analogous to blood alcohol tests to measure alcohol intoxication. Considerable effort is being devoted to studying the new compounds resulting from the original marihuana constituents. The questions are: What are these metabolites, how can we identify and then measure them and how can we relate their levels in the blood to the intake of the original material and to possible behavioral consequences.

MEASUREMENT OF EFFECTS

Marihuana shares with other psychoactive drugs the problem of adequately describing and defining its subjective effects. There is considerable variability in the way in which the different sensations produced are interpreted by the user. What appear to be similar subjective states may be quite differently interpreted by different users. The same effect may be pleasurable to one user and unpleasant, even frightening, to another. It may also be that those finding the experience predominantly pleasant are inclined to minimize or ignore the less pleasant effects.

Although the state of intoxication is frequently vivid as described by the user, an observer may see little change from a normal state. Mild states of intoxication often go completely undetected. The user's mood may be quite variable from being happy and gregarious to quiet and detached. At higher doses, speech may be slowed or slurred. Physiological changes are notably minimal. Increase in pulse rate and bloodshot eyes are the most obvious. Dry mouth and throat, along with an increase in appetite are common. Other physiological effects often are inconsistent or not reproducible.

Generally, simple physical and psychological performances are not much affected in short-term, moderate dosages while more complicated physical and psychological performances may be impaired. This may be due to an effect of marihuana intoxication on immediate memory. There is, however, great variability between users and little is presently known about the effects of long-term, chronic use on performance. Subjectively, time distortion appears common with users reporting that a minute appears more like several minutes passage of time. Other subjective effects range from pleasant relaxation to acute anxiety, loss of reality contact, hallucinations and panic. These latter reactions are less common and much more likely when unexpectedly large doses of active material are consumed.

As is true of other psychoactive drugs, much appears to depend on the expectations of the user and the circumstances under which he uses the drug (set and setting). The user's set, referring to his total psychological makeup, mood at time of use and personal expectations, make a considerable difference in the effects experienced, especially in low to moderate dosages. The external conditions of use, or setting, also make a great deal of difference in the total experience. A user feeling emotionally secure in a pleasant setting free of fear of detection is likely to have a different experience from someone taking the drug under more anxiety-producting conditions. The more neutral setting of the research laboratory may produce still different experiences. It is generally conceded that the individual and group expectations involved in the typical circumstances of marihuana use are important although difficult to evaluate aspects of the drug reaction.

Patterns of marihuana consumption vary widely. For many, use is on an infrequent or one time experimental basis. As the number of such experimenters increases, the user becomes less distinguishable from the general population. A significant portion of those who have tried marihuana in the United States have done so only once or several times and have chosen not to repeat it or continue the experience. Others use it occasionally, perhaps on weekends, and a still smaller number use it on a more frequent basis. In evaluating possible health consequences of marihuana use it is, therefore, essential that consideration be given to:

1. The period of time over which the drug is used.

2. The dosage (i.e. potency and amount) consumed and the frequency with which it is used.

3. The physical and mental health of the user.

It must also be remembered that marihuana consumption in the United States has been primarily by youthful users. The use of a relatively low potency material by an unusually healthy age group may be quite misleading if the limited impressions involved are extended to older, less healthy portions of the population.

While research to date has been heavily concentrated in youthful populations with limited duration of drug use, increasing emphasis is currently being placed on examining the long-range chronic implications of use in cultures where such use has been widespread for many years.

Evaluation of the drug effects is further complicated by the illegality of marihuana use. The complexities introduced by the life style and multi-drug use history of some users are difficult to surmount in order to separate out the effect of marihuana. In this population, it is almost impossible to clarify the cause and effect relationship between drug consumption and consumer personality as related to consequences of drug use.

It is difficult to know to what extent the pathology that may be observed in some heavy users is the result of pre-existing psychological and social difficulties which made heavy drug use attractive or is an effect of the drug itself. Thus, some individuals lacking the conventional goals and motivation may find heavy marihuana use appealing. Their apparent lack of more conventional goal-directed behavior (the so-called amotivational syndrome) may then be inaccurately attributed to the drug. Attempts are currently underway to examine carefully the early life history of users as well as changes that occur over several years of marihuana use to determine what are the interactive effects of personality and drug use.

RESEARCH PROBLEMS AND DIRECTIONS

Research supported principally by the National Institute of Mental Health has laid the groundwork for the resolution of many of the basic research questions concerning marihuana. Work already completed or currently underway in animals is providing some of the basic understanding of the drug necessary, before more extensive human research is possible. However, laboratory experiments with animals to measure the effects of marihuana are fraught with many difficulties. Since no single species of animal exactly duplicates the characteristics of man, the choice of an appropriate experimental animal is frequently difficult. There are many technical problems that need to be surmounted. Because animals cannot readily be induced to smoke marihuana in a manner similar to that of humans, considerable effort is going into developing alternative methods of administration. Although intravenous injection in animals best approximates smoking in humans for immediacy of effect, it is not possible to use over long periods of time with present techniques. Another difficulty is the fact that THC and the marihuana extracts are not soluble in water or other inert solvents, making it difficult to separate out their effects from those of the material in which they are dissolved. Development of standardized and stable dosage forms, essential to comparability of research studies, is also being actively pursued.

Carefully controlled studies of the effects of long-term use of marihuana and related materials in populations of chronic users are now underway. To date, such populations have been found only outside the United States, greatly complicating the problem of doing adequate research. Effects of drug usage may be obscured by such factors as state of nutrition, economic status, and other cultural considerations. It is not always easy, therefore, to determine the significance of any one foreign study for the rapidly changing drug situation here in the United States. However, as lines of evidence derived from animal experimentation, human laboratory findings, survey techniques, and clinical research increasingly converge it will be possible to provide more reliable answers to the questions, "What are the health consequences of marihuana usage?"

The preceding discussion has attempted to convey something of the complexity of the marihuana problem and some of the many difficulties which have been or are being surmounted in obtaining a meaningful answer to the question of marihuana's health implications. The National Institute of Mental Health, utilizing the skills of distinguished physicians and scientists who are knowledgeable in this area, has devoted several years of effort to devising a research plan to provide an adequate scientific basis for public policy in this area. The brief outline below shows the procedures being followed in this plan. Although certain of the research phases must precede others (e.g. materials development was necessary before adequate pharmacological analysis was possible), wherever possible research activities are being carried on along as many lines simultaneously as the nature of the problem will permit. Thus, an attempt is being made to learn some of the implications of long-term, chronic use, although some of the information that might be useful in planning this work is not yet available. By investigating several areas simultaneously in this way the Department hopes to expedite the development of data to permit a responsible estimate of the health hazards posed by marihuana.

It must be kept in mind that no single study is likely to be definitive. Each of the succeeding reports that will be made to the Congress and the American people is likely to be more detailed and to more adequately assess the problem. Because our society is different in many important ways from that of other countries in which the use of marihuana has been widespread for many years, foreign experience is not easily translatable into guidelines for the United States. By their very nature, longitudinal studies of long-term users in our own culture will require significant periods of time to complete. The picture is fragmentary now and will continue to be so for a period of time. It is clear that several years will be required before preliminary findings can be interpreted with confidence and the relation between marihuana and health can be adequately defined.

Most of the research described in the following outline is currently in progress or planned. Because of the need for adequate replication of results and the inherent complexity of the problem, many phases of the investigation will continue after a sufficient basis may have been provided for beginning other types of work. Attempts to assess the patterns of use are on a continuing basis

since this is an area marked by constant change. Although much of the materials development phase is completed, there will be an ongoing need to continue to supply these materials to the research community. For convenience in description, the research is broadly divided into the biologically oriented and psychosocial-sociological research although, of course, such a separation is to some extent arbitrary.

CHEMICAL AND BIOLOGICAL INVESTIGATION

I. Materials development—involves the provision of standard marihuana and related natural synthetic materials in a variety of forms in order to permit well controlled comparable investigations with materials of known composition and potency.

A. Provision of Materials:

1. Cultivation of the plant and its varieties and/or synthesis of standard products.

2. Confiscated materials—for processing into potent materials extracts.

B. Analytical:

1. Identification of active and inactive constituents, i.e., the complete composition of the drug.

2. Identification of products of pyrolysis.

3. Procedures for control of purity.

4. Stability studies of product and its constituents.

5. Qualitative and quantitative determination of drug levels.

a. Urine, feces, blood, breath, saliva.

b. Vital organs.

II. Adverse Effects:

A. Toxicology:

1. Preclinical (animal).

a. Define appropriate dosage levels, acute, subacute, and chronic studies and associated pathology.

b. Characteristics of tolerance, physical dependence, and withdrawal leading to abuse potential.

c. Behavioral-central nervous system toxicity.

i. Psychological state changes.

ii. Social behavior disruption.

iii. Task performance.

iv. Neurological deficits.

2. Clinical (human) includes chronic studies overseas.

a. Define appropriate dosage levels and acute, subacute, and chronic studies and associated pathology.

b. Characteristics of tolerance, physical dependence, and withdrawal leading to abuse potential.

c. Behavioral-central nervous system toxicity.

i. Possible personality changes.

ii. Effects on thought processes, higher mental functions.

iii. Effects on social behavior.

iv. Possible neurological deficits related to use.

III. Genetic Damage:

A. Mutagenesis—Possible genetic changes produced by marihuana.

1. Human population screening.

a. Population monitoring.

b. Retrospective studies.

c. Prospective studies.

2. Non-mammalian assays (virus, bacteria, fungi, drosophila).

3. Mammalian assays (dominant lethal, host mediated).

4. Animal cytological studies.

a. in vitro.

b. in vivo.

5. Human cytological studies.

a. in vitro.

b. in vivo.

6. Structure-activity relationships of marihuana and synthetic derivatives.

B. Teratogenesis—Possible abnormalities in fetus or newborn infant produced by drug's effects on uterine development.

1. Human populations.

a. Population monitoring.

b. Retrospective studies.

c. Prospective studies.

2. Animal assays.

3. Structure-activity relationship of marihuana and synthetic derivatives.

C. Carcinogenesis—Possible cancer inducing aspect to marihuana.

1. Human populations.

a. Population monitoring.

b. Retrospective studies.

c. Prospective studies.

IV. Pharmacology:

A. General pharmacological effects (cardiovascular-renal pulmonary, gastrointestinal, endocrine, others).

B. Central nervous system pharmacology—site and mechanism of action.

1. Specific effects on brain.

a. Electrophysiological.

i. animals—by experiment.

ii. human—by observation.

b. Biochemical (biogenic amines, acetylcholine, envymes, electrolytes).

c. Micro-anatomical-histological.

2. Behavioral effects—psychopharmacology.

C. 1. Structure-activity relationships.

2. Development of substitute and/or antagonists.

3. Physiological and psychological aspects of euphoria, "turn-on," high, dependence and analgesia.

4. Evaluation of efficacy, potency and strength between various preparations.

a. Differences between species.

b. Differences between various routes of administration.

5. Drug interactions (MAO inhibitors, reserpine, sympathetic blocking agents, histamine, enzyme induction).

V. Biochemistry:

A. Distribution in body: evaluation of absorption, tissue levels binding and storage.

B. Metabolism: Identification of metabolites, their activity.

C. Excretion—By-products of marihuana and derivatives.

PSYCHOSOCIAL AND SOCIOLOGICAL RESEARCH

I. Epidemiology of marihuana use—research directed at learning the incidence and prevalence of marihuana use in various populations and its demographic correlates.

II. Psychosocial correlates of drug use—research on the processes and conditions which promote initiation, persistence, discontinuation, and relapse in drug use, relation of marihuana to other drug use, activities related to drug use and possible psychosocial consequences of such use—studies are both ongoing and planned.

1. Patterns of Use.

2. Longitudinal History of Marihuana Use in Selected Populations.

III. Personality dynamics ad psychological characteristics of drug users.

IV. Interpersonal, social and cultural correlates of use—the relationship of marihuana use to such aspects as academic and career development, attitudes, values, crime, and the role of child rearing.

V. Characteristics of drug using subgroups—research directed at understanding the characteristics of heavily drug using subgroups to determine possible effects of such use and possible intervention techniques to prevent use.

VI. Effects of marihuana use on simple and complex psychological and psychomotor tasks—this includes the effects of marihuana on various kinds of mental functioning, including problem solving, memory, intelligence, coordinated performances such as driving a motor vehicle, etc., in short, a wide range of possible areas in which performance might be effected adversely to the detriment of the individual or the society.

Research of the type outlined above is being carried out on many different types of populations including preliminary attempts to learn the implications of chronic marihuana use in overseas populations.

EDUCATIONAL ACTIVITIES

Working through its Office of Education this Department is engaged in the training of educational personnel to be more effective in encouraging students to avoid drug abuse, including the use of marihuana. This is being accomplished through three programs.

Qualified personnel and young people from across the Nation have selected 10 drug education curricula prepared by State or local education agencies and these are being used as representative samples to aid other agencies in the preparation of their curricula. The samples contain factual information on marihuana.

The 50 States and the Territories are participating in a national drug education training program. State and Territory teams were trained at four national training centers in the summer of 1970 to be trainers of local school community teams during the present school year, 1970–71. The local teams will train school personnel in their districts to develop drug education programs and integrate them into the overall school programs. Factual information on marihuana will be included.

There is a continuing prevention program to train highly selected ex-addicts as counselor aides to work in schools and communities with young people and adults. In this program factual information on marihuana is presented and discussed.

The NIMH public information campaign which in its initial mass media phase stimulated 20-million requests for information is being expanded. New publications, posters, films, exhibits and other communications techniques are being developed to augment educational efforts. The National Clearinghouse for Drug Abuse Information at NIMH, established by President Nixon on March 11, 1970, and now operational, provides a central Federal source for community leaders, parents, educators, and students. It makes available upon request and through a dissemination program the latest factual information on marihuana and other drugs of abuse.

These educational activities represent the best thinking not only of this Department but also of other Federal agencies whose advice has been solicited in the planning process.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. HUGHES. Mr. President, I yield back the remainder of my time.

Mr. DODD. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

Mr. BYRD of West Virginia. Mr. President, I am pleased to support H.R. 18583, the Comprehensive Drug Abuse Prevention and Control Act of 1970. Legislation similar to this act—S. 3246, the Controlled Dangerous Substances Act—was passed by the Senate last January 28.

The dangers of drug abuse has been one of continuing concern to me. The insidious menace of drugs knows no social or economic boundaries, and it has reached epidemic proportions throughout the United States. It is a problem so widespread that it has touched the lives of nearly half of our high school and college students. In suitable re-

sponse, this legislation is farreaching in scope. It is legislation of the highest priority, and it should be speedily enacted into law.

This bill will strengthen, clarify, and extend existing laws controlling the manufacture, commerce, and usage of dangerous drugs and substances. It aims at cutting off the source of illegal drugs—both those produced domestically and those imported—and it distinguishes between the unfortunate user and the dealer or pusher. Its strong criminal penalties for those who traffic in illegal narcotics include a term of imprisonment up to 15 years, a maximum fine of $25,000, or both for first offenders; and a term of imprisonment up to 30 years and/or a fine of up to $50,000 for repeated offenders.

When these new penalty provisions are enacted into law, the professional criminal should no longer find it profitable to market his narcotics.

Mr. President, this legislation sheds new light on the entire problem of drug abuse—drug abuse that is eating away at the moral fiber of our Nation. It provides for rehabilitation and treatment of existing addicts, for prevention through education, and for additional knowledge through research.

This legislation will establish a multifold approach—medical, educational, control, and enforcement—to answer a problem of staggering dimensions. It will be strong enough to dissuade even the most hardened criminal, discerning enough to keep the most impulsive youth from being led astray into a life of crime, and comprehensive enough that the rising tide of drug abuse within our country will be turned. It is a significant weapon with which to fight the drug-induced ravages of body and mind which today are destroying so many of our young people, and I fully support its passage.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. DODD. I yield back my time.

Mr. HRUSKA. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is: Shall the bill pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Florida (Mr. HOLLAND), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Washington (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. RUSSELL), the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. SYMINGTON), 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 Georgia (Mr. TALMADGE), 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 Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Florida (Mr. HOLLAND), the Senator from North Carolina (Mr. JORDAN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington, Mr. MAGNUSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Maine (Mr. MUSKIE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Texas (Mr. YARBOROUGH), the Senator from New Mexico (Mr. MONTOYA), would each vote "yea."

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senators from New York (Mr. GOODELL and Mr. JAVITS), the Senator from California (Mr. MURPHY), the Senator from Kansas (Mr. PEARSON), 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 Utah (Mr. BENNETT), the Senator from Colorado (Mr. ALLOTT), and the Senator from North Dakota (Mr. YOUNG) are detained on official business.

If present and voting, the Senator from New York (Mr. GOODELL), the Senator from New York (Mr. JAVITS), the Senator from South Dakota (Mr. MUNDT), the Senator from California (Mr. MURPHY), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 54, nays 0, as follows:

[No. 367 Leg.]

YEAS—54

Allen	Ellender	Miller
Baker	Ervin	Nelson
Bayh	Griffin	Packwood
Bible	Gurney	Pastore
Boggs	Hansen	Pell
Brooke	Hart	Percy
Burdick	Hatfield	Proxmire
Byrd, W. Va.	Hollings	Randolph
Case	Hruska	Ribicoff
Church	Hughes	Saxbe
Cook	Inouye	Schweiker
Cooper	Jackson	Scott
Cotton	Jordan, Idaho	Smith, Maine
Curtis	Mansfield	Spong
Dodd	Mathias	Stevens
Dole	McGovern	Thurmond
Dominick	McIntyre	Williams, N.J.
Eagleton	Metcalf	Williams, Del.

NAYS—0

NOT VOTING—46

Aiken	Harris	Muskie
Allott	Hartke	Pearson
Anderson	Holland	Prouty
Bellmon	Javits	Russell
Bennett	Jordan, N.C.	Smith, Ill.
Byrd, Va.	Kennedy	Sparkman
Cannon	Long	Stennis
Cranston	Magnuson	Symington
Eastland	McCarthy	Talmadge
Fannin	McClellan	Tower
Fong	McGee	Tydings
Fulbright	Mondale	Yarborough
Goldwater	Montoya	Young, N. Dak.
Goodell	Moss	Young, Ohio
Gore	Mundt	
Gravel	Murphy	

So the bill (H.R. 18583) was passed.

Mr. DODD. Mr. President, I ask unanimous consent that in the engrossment of the Senate amendments to the bill (H.R. 18583), the Secretary of the Senate be authorized to make technical and clerical corrections.

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

Mr. DODD. I move that the Senate insist on its amendments and request a conference with the House of Representatives thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. HUGHES, Mr. YARBOROUGH, Mr. RANDOLPH, Mr. EASTLAND, Mr. MCCLELLAN, Mr. DODD, Mr. JAVITS, Mr. DOMINICK, Mr. HRUSKA, and Mr. THURMOND conferees on the part of the Senate.

Mr. BYRD of West Virginia. Mr. President, I have been asked by the Senator from Washington (Mr. MAGNUSON) and the Senator from Arkansas (Mr. MCCLELLAN), both of whom are unavoidably absent, to state that had they been present for the vote on the passage of the bill, they would have voted in the affirmative.

THE ILLEGAL TRANSPORTATION, USE, OR POSSESSION OF EXPLOSIVES

Mr. BYRD of West Virginia. Mr. President, for the purpose of making it the pending business, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 1233.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. Calendar No. 1233, S. 3650, a bill to amend section 837 of title 18, United States Code, to strengthen the laws concerning illegal use, transportation, or possession of explosives and the penalties with respect thereto, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. BYRD of West Virginia. Mr. President, there will be no action on S. 3650 this evening.

LIMITATION ON STATEMENTS DURING THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that tomorrow, immediately following the

prayer and the disposition of the Journal and any unobjected-to bills on the Legislative Calendar, there be a period for the transaction of routine morning business of not to exceed 30 minutes, with statements therein limited to 3 minutes.

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

CONSIDERATION OF HOUSE JOINT RESOLUTION 264 TOMORROW

Mr. BYRD of West Virginia. Mr. President, under the order earlier today, at the conclusion of the period for the transaction of routine morning business on tomorrow, the equal rights amendment (H.J. Res. 264) will be laid before the Senate; is that correct.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD of West Virginia. I ask unanimous consent that time on the equal rights amendment (H.J. Res. 264) tomorrow be limited to not to exceed 2 hours.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

STATUS OF UNFINISHED BUSINESS TOMORROW

Mr. BYRD of West Virginia. Then, Mr. President, I ask unanimous consent that when House Joint Resolution 264, the unfinished business, is temporarily laid aside tomorrow, it remain in that status until the conclusion of morning business on Friday morning next.

The PRESIDING OFFICER. Without objection it is so ordered.

CONSIDERATION OF THE ILLEGAL TRANSPORTATION, USE, OR POSSESSION OF EXPLOSIVES BILL TOMORROW

Mr. BYRD of West Virginia. I ask unanimous consent that at the time Senate Joint Resolution 264 is temporarily laid aside tomorrow, S. 3650, the pending business just laid before the Senate, again be laid before the Senate and made the pending business.

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

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970—PERSONAL STATEMENTS

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

Mr. BYRD of West Virginia. I yield.

Mr. MAGNUSON. I understand that the Senator from West Virginia has just announced me in favor of the bill just passed. I wanted to say for the RECORD that I was here, and had no information such as given to other Senators that the vote was occurring. They have been checking everyone's clock, have they not, in each Senator's office to make sure that it rings and shows a light? Mine apparently was not fixed very well. Someone came and knocked on my door and said we should be here. But I appreciate the Senator's action. I am heartily in favor of the bill, and I appreciate the great courtesy of the Senator from West Virginia.

Mr. BYRD of West Virginia. I thank the Senator. I am sorry that the situation developed as it did.

Mr. MAGNUSON. It did not develop; it is just a question that sometimes this happens to all of us.

Mr. DODD. Mr. President, I do not want to leave the Chamber tonight without thanking my colleagues for the passage of this bill. It has been a long and difficult struggle, and everyone has helped. I do not know of anyone who has been opposed to it, though we have had differences as to how it should be done.

Prime among the Senators who have contributed so much is the Senator from Iowa (Mr. HUGHES), who made a massive contribution, as did others as well. I hope we will get this bill agreed to by the House conferees, so that we can get on with it, make it the law of the land, and do what needs to be done. I express my deep gratitude to all who have participated in this task, and I thank my colleagues for making it possible.

Mr. HUGHES. Mr. President, I thank the distinguished Senator from Connecticut for his comments, and also for the courtesy he has extended to me in the debate and for the leadership in this area that he has presented in this body in guiding this bill through the Senate twice in almost identical form. I do appreciate his courtesies extended to me. I am very pleased with what I think is a good bill, and I compliment the Senator from Connecticut.

Mr. DODD. I thank the Senator from Iowa.

PRESIDENT NIXON'S PEACE INITIATIVE FOR INDOCHINA

Mr. PERCY. Mr. President, in just a few moments the President of the United States will be taking to the television and radio to address the Nation and the world on a new initiative for peace in Indochina. From what I understand the President is about to say in a moment or two, I commend him on taking this initiative, which is both timely and reasonable. It sets the stage for real negotiation at Paris and provides the basis for a political settlement fair to all parties.

I am especially pleased that the President chose to offer a cease-fire arrangement to stop the killing. Since my Senate speech of July 27 urging a cease-fire during which all prisoners would be repatriated, I have undertaken a number of efforts and participated in others to stimulate interest in a cease-fire proposal. I have discussed specifics with the President's leading foreign affairs advisers.

Now I have much hope that there can be a political settlement if the other side will negotiate in good faith. The basis for a settlement is now on the table.

The President should be particularly commended for calling for an Indochina peace conference. I have long felt that an Asian peace conference would be the best basis on which to negotiate a settlement, and the initiative taken by the President in this regard is to be commended.

He has called for a timetable for complete withdrawal of all forces, and indicated our solemn intention to maintain our present schedule of withdrawal of our forces. He has called for a political settlement which takes into account the existing arrangement of forces in South Vietnam, and he has called for taking the situation as a whole and settling the entire Indochina problem, rather than just looking at one particular piece of the puzzle there.

Finally, and most important to the many, many people who are concerned about our prisoners of war—and all of us have talked with the mothers, the parents, and the wives of the prisoners of war—he calls for the immediate and unconditional release of all prisoners of war.

When these proposals are laid forward in Paris on the conference table tomorrow, the responsibility rests upon Hanoi, the responsibility rests upon the VC, to see that they now seize this initiative that has been taken by the President and respond favorably. The world will be awaiting the answer, because clearly if they continue the war and do not respond favorably to these initiatives of the President, the responsibility for the continuation of this tragic war will be theirs, not ours.

Once again, I commend the President on his message to the Nation and to the world this evening.

Mr. President, I ask unanimous consent to have the President's speech printed at this point in the RECORD.

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

TEXT OF A RADIO AND TELEVISION ADDRESS BY THE PRESIDENT: NEW INITIATIVE FOR PEACE IN SOUTHEAST ASIA

Tonight I would like to talk to you about a major new initiative for peace.

When I authorized operations against the enemy sanctuaries in Cambodia last April, I also directed that an intensive effort be launched to develop new approaches for peace in Indochina.

In Ireland on Sunday, I met with the chiefs of our delegation to the Paris talks. This meeting marked the culmination of the Government-wide effort begun last spring on the negotiation front. After considering the recommendations of all my principal advisors, I am tonight announcing new proposals for peace in Indochina.

This new peace initiative has been discussed with the governments of South Vietnam, Laos, and Cambodia. It has their full support. It has been made possible in large part by the remarkable success of the Vietnamization policy over the last 18 months. Tonight I want to tell you what these new proposals are and what they mean.

First, I propose that all armed forces throughout Indochina cease firing their weapons and remain in the positions they now hold. This would be a "cease-fire-in-place." It would not in itself be an end to the conflict, but it would accomplish one goal all of us have been working toward: an end to the killing.

I do not minimize the difficulty of maintaining a ceasefire in a guerrilla war where there are no front lines. But an unconventional war may require an unconventional truce; our side is ready to stand still and cease firing.

I ask that this proposal for a ceasefire-in-place be the subject for immediate negotiation. My hope is that it will break the log-jam in all the negotiations.

This ceasefire proposal is put forth without preconditions. The general principles that should apply are these:

A ceasefire must be effectively supervised by international observers, as well as by parties themselves. Without effective supervision a ceasefire runs the constant risk of breaking down. All concerned must be confident that the ceasefire will be maintained and any local breaches of it quickly and fairly repaired.

A ceasefire should not be the means by which either side builds up its strength by an increase in outside combat forces in any of the nations of Indochina.

A ceasefire should cause all kinds of warfare to stop. This covers the full range of actions that have typified this war, including bombing and acts of terror.

A ceasefire should encompass not only the fighting in Vietnam but in all of Indochina. Conflicts in this region are closely related. The United States has never sought to widen the war. What we seek is to widen the peace.

Finally, a ceasefire should be part of a general move to end the war in Indochina.

A ceasefire-in-place would undoubtedly create a host of problems in its maintenance. But it has always been easier to make war than to make a truce. To build an honorable peace, we must accept the challenge of long and difficult negotiations.

By agreeing to stop the shooting, we can set the stage for agreements in other matters.

The second point of the new initiative for peace is this:

I propose an Indochina Peace Conference. At the Paris talks today, we are talking about Vietnam. But North Vietnamese troops are not only infiltrating, crossing borders and establishing bases in South Vietnam—they are carrying on their aggression in Laos and Cambodia as well.

An international conference is needed to deal with the conflict in all three states of Indochina. This war in Indochina has been proved to be of one piece; it cannot be cured by treating only one of its areas of outbreak.

The essential elements of the Geneva Accords of 1954 and 1962 remain valid as a basis for settlement of problems between states in the Indochina area. We shall accept the results of agreements reached between those states.

While we pursue the convening of an Indochina Peace Conference, we will continue negotiations in Paris. Our proposal for a larger conference can be discussed there as well as through other diplomatic channels. The Paris talks will remain our primary forum for reaching a negotiated settlement, until such time as a broader international conference produces serious negotiations.

The third part of our peace initiative has to do with United States forces in South Vietnam.

In the past twenty months, I have reduced our troop ceilings in South Vietnam by 165,000 men. During the spring of next year these withdrawals will total more than 260,000 men—about one-half the number in South Vietnam when I took office.

As the American combat role and presence have decreased, so have American casualties. Their level since the completion of the Cambodian operations was the lowest for a comparable period in the last four and one half years.

We are ready to negotiate an agreed timetable for complete withdrawals as part of an overall settlement. We are prepared to withdraw all our forces as part of a settlement based on the principles I spelled out previously and the proposals I am making tonight.

Fourth, I ask the other side to join in a search for a political settlement that truly meets the aspirations of all South Vietnamese.

Three principles govern our approach:

We seek a political solution that reflects the will of the South Vietnamese people.

A fair political solution should reflect the existing relationship of political forces.

We will abide by the outcome of the political process agreed upon.

Let there be no mistake about one essential point: The other side is not merely objecting to a few personalities. They want to dismantle the organized non-communist forces and insure the takeover by one party, and they demand the right to exclude whomever they wish from government.

This patently unreasonable demand is totally unacceptable.

As my proposals today indicate, we are prepared to be flexible on many matters. But we stand firm for the right of all the South Vietnamese people to determine for themselves the kind of government they want.

We have no intention of seeking any settlement at the conference table other than one which fairly meets the reasonable concerns of both sides. We know that when the conflict ends, the other side will still be there. The only kind of settlement that will endure is one both sides have an interest in preserving.

Finally, I propose the immediate and unconditional release of all prisoners of war held by both sides.

War and imprisonment should be over for all these prisoners. They and their families have already suffered too much.

I propose that all prisoners of war, without exception and without condition, be released now to return to the place of their choice.

I propose that all journalists and other innocent civilian victims of the conflict be released immediately as well.

The immediate release of all prisoners of war would be a simple act of humanity.

But it could even be more. It could serve to establish good faith, the intent to make progress, and thus improve the prospects for negotiation.

We are prepared to discuss specific procedures to complete the speedy release of all prisoners.

The five proposals which I have made tonight can open the door to an enduring peace in Indochina.

Ambassador Bruce will present these proposals formally to the other side in Paris tomorrow. He will be joined in that presentation by Ambassador Lam representing South Vietnam.

Let us consider for a moment what the acceptance of these proposals would mean.

Since the end of World War II, there has always been a war going on somewhere in the world. The guns have never stopped firing. By achieving a ceasefire in Indochina, and holding firmly to the ceasefire in the Middle East, we could hear the welcome sound of peace throughout the world for the first time in a generation.

We would have some reason to hope that we had reached the beginning of the end of war in this century. We might then be on the threshold of a generation of peace.

The proposals I have made tonight are designed to end the fighting throughout Indochina and to end the impasse in negotiations in Paris. Nobody has anything to gain by delay and only lives to lose.

There are many nations involved in the fighting in Indochina. Tonight, all those nations but one announce their readiness to agree to a ceasefire. The time has come for the government of North Vietnam to join its neighbors in a proposal to quit making war and to start making peace.

As you know, I have just returned from a trip which took me to Italy, Spain, Yugoslavia, England and Ireland.

Hundreds of thousands of people cheered as I drove through the major cities in these countries.

They were not cheering for me as an individual. They were cheering for the country that I was proud to represent—the United States of America. For millions of people in the free world, the non-aligned world and the communist world, America is a land of freedom, of opportunity, of progress.

I believe there is another reason they welcomed me so warmly in every country I visited despite their wide differences in political systems and national backgrounds.

In my talks with leaders all over the world I find that there are those who may not agree with all of our policies. But no world leader to whom I have talked fears that the United States will use its power to dominate another country or destroy its independence. We can be proud that this is the cornerstone of America's foreign policy.

There is no goal to which this nation is more dedicated, and to which I am more dedicated than to build a new structure of peace in the world where every nation including North Vietnam as well as South Vietnam can be free and independent with no fear of foreign aggression or domination.

I believe every American deeply believes in his heart that the proudest legacy the United States can leave during this period when we are the strongest nation in the world is that our power was used to defend freedom, not to destroy it; to preserve the peace, not to break the peace.

It is in that spirit that I make this proposal for a just peace in Vietnam and in Indochina.

I ask that the leaders in Hanoi respond to this proposal in the same spirit.

Let us give our children what we have not had during this century, a chance to enjoy a generation of peace.

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

Mr. PERCY. I yield.

Mr. DODD. Mr. President, I am happy to join the Senator in his words of approval of the President's speech tonight to the American people. I think he is right.

I do not say this in any vain way, but there are many Senators here who recall that we suggested practically the same thing in 1967 and 1968, when the President was not in office. I think the President is doing what is right in his efforts to get us out of this dreadful war.

PROTECTION OF THE MARINE ENVIRONMENT

Mr. PELL. Mr. President, I congratulate President Nixon on his endorsement of the Council on Environmental Quality's report calling for the banning of unregulated dumping and for strict legislation with regard to the dumping of material that is harmful to the marine environment. I am glad that the administration not only requests the establishment of legal controls, but provision is made that the Coast Guard shall be the enforcement agency. This strong message on the part of the administration is to be commended.

The problem is real and immediate. It is possible that within the lifetime of our children the Atlantic Ocean can become another Lake Erie, polluted and barren of life. Let us remember the important role living matter in the oceans play in the refurbishing of oxygen. Let us remember that phytoplankton and zooplankton, can exist without we humans, but we humans cannot exist without

these minute particles of basic animal life. Then we realize the importance of these proposed measures.

In this regard, I ask unanimous consent that the President's message be inserted in the RECORD.

There being no objection, the President's message was ordered to be printed in the RECORD, as follows:

To the Congress of the United States:

The oceans, covering nearly three-quarters of the world's surface, are critical to maintaining our environment, for they contribute to the basic oxygen-carbon dioxide balance upon which human and animal life depends. Yet man does not treat the oceans well. He has assumed that their capacity to absorb wastes is infinite, and evidence is now accumulating on the damage that he has caused. Pollution is now visible even on the high seas—long believed beyond the reach of man's harmful influence. In recent months, worldwide concern has been expressed about the dangers of dumping toxic wastes in the oceans.

In view of the serious threat of ocean pollution, I am today transmitting to the Congress a study I requested from the Council on Environmental Quality. This study concludes that:

The current level of ocean dumping is creating serious environmental damage in some areas.

The volume of wastes dumped in the ocean is increasing rapidly.

A vast new influx of wastes is likely to occur as municipalities and industries turn to the oceans as a convenient sink for their wastes.

Trends indicate that ocean disposal could become a major, nationwide environmental problem.

Unless we begin now to develop alternative methods of disposing of these wastes, institutional and economic obstacles will make it extremely difficult to control ocean dumping in the future.

The nation must act now to prevent the problem from reaching unmanageable proportions.

The study recommends legislation to ban the unregulated dumping of all materials in the oceans and to prevent or rigorously limit the dumping of harmful materials. The recommended legislation would call for permits by the Administrator of the Environmental Protection Agency for the transportation and dumping of all materials in the oceans and in the Great Lakes.

I endorse the Council's recommendations and will submit specific legislative proposals to implement them to the next Congress. These recommendations will supplement legislation my Administration submitted to the Congress in November, 1969 to provide comprehensive management by the States of the land and waters of the coastal zone and in April, 1970 to control dumping of dredge spoil in the Great Lakes.

The program proposed by the Council is based on the premise that we should take action before the problem of ocean dumping becomes acute. To date, most of our energies have been spent cleaning up mistakes of the past. We have failed to recognize problems and to take corrective action before they became serious. The resulting signs of environmental decay are all around us, and remedial actions heavily tax our resources and energies.

The legislation recommended would be one of the first new authorities for the Environmental Protection Agency. I believe it is fitting that in this recommended legislation, we will be acting—rather than reacting—to prevent pollution before it begins to destroy the waters that are so critical to all living things.

RICHARD NIXON.

THE WHITE HOUSE, *October 7, 1970.*

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970—INQUIRY ON APPOINTMENT OF CONFEREES

Mr. HRUSKA. Mr. President, a little earlier, the announcement was made of the membership of the conference committee on the bill that has just been voted on, H.R. 18583. This Senator would like to make inquiry as to how that list was composed and from whom the names were procured and what arrangement was made with reference to the composition of that committee.

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

Mr. HRUSKA. I yield.

Mr. DODD. Insofar as this Senator is concerned, Senator EASTLAND this afternoon or this evening came to me and said that he most likely could not be here at this hour. He gave me a list of names of those whom he would nominate to be conferees. I turned this list over to Mr. Ferris, which was the extent of my involvement with it.

Mr. HRUSKA. This Senator would like to be informed as to how the additional five names were added to the list of conference committee members.

This is a bill which is in the jurisdiction of the Judiciary Committee. It originated there as to titles II and III, and that is where it would be referred. Now we find five additional names. This Senator would like to know how it was composed and by what authority the five additional names from the Committee on Labor and Public Welfare were put on it.

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

Mr. HRUSKA. I yield.

Mr. DODD. I do not think the Senator from Nebraska or the Senator from Connecticut have any objection to Senators from the Committee on Labor and Public Welfare being named as conferees. I am sure he would agree that Senator HUGHES should be on the conference committee. I am not distinguishing him from anybody else. I do not fuss about it. I am sure that we can all work our way out of this and get a good bill.

Mr. HRUSKA. I am not making a fuss about it, but as one of the managers of this bill, it seems to me that, in all common courtesy, if nothing else, aside from propriety, this Senator should have been consulted and given a chance to speak on the subject. I just raise the point at this time, and I reserve the right to pursue the point further at a later time.

Mr. DODD. I do not want the Senator to misunderstand me. He has been a strong man in this whole struggle. We have men on this conference committee, all of whom are interested in this problem. Why can we not get along all right?

Mr. HRUSKA. Mr. President, this bill has three titles. The third title emanated from the House Ways and Means Committee. Does that mean that someone can walk up to the bench and submit a list of five names from that committee so that we will have a conference committee of 15 members? Where is the orderly procedure in this matter?

It seems to me that it is a gratuitous way of composing the committee, and totally without any knowledge on the part of the managers of the bill. I take serious objection to it, and I so state.

The PRESIDING OFFICER (Mr. HANSEN). Under the rules, the Chair has no authority to appoint conferees. But the request was that the Chair be authorized to appoint the conferees, which request was granted by the Senate. It is the normal procedure for the list to be sent up to the Chair, which the Chair has reported to the Senate.

Mr. HRUSKA. Then, let me ask this question: If the Senator from Nebraska undertook to submit a list of five, also, would that list have been added to the list of 10?

The PRESIDING OFFICER. It was the Chair's understanding that this list had been cleared with the parties concerned.

Mr. HRUSKA. With whom?

Mr. BYRD of West Virginia. With the parties concerned.

Mr. HRUSKA. The Senator knew nothing about it until the names were read, and this Senator is a comanager of this bill. That understanding, if it existed, is erroneous.

I raise the point, and I reserve it for further discussion in due time.

Mr. BYRD of West Virginia. Mr. President, may I say that I can appreciate the strong feelings that have been expressed by the able Senator from Nebraska (Mr. HRUSKA). I think he should have been consulted as the ranking minority member. But I can understand how, through inadvertence, he was not consulted. I wish he had been, and I wish to express regret that he was not consulted.

May I point out that this is a bill which does have dual jurisdiction insofar as committees are concerned. It came to the Senate from the House. It was stopped at the bar of the Senate. It was placed on the calendar without reference to committees. And this is not without precedent. There have been instances heretofore in which, because of dual jurisdiction of committees, conferees have been appointed from different committees, each having jurisdiction. So it is not without precedent.

I do, however, understand the feeling of the Senator from Nebraska. I wish he had been consulted. He has every reason to be perturbed. But inasmuch as the inadvertence has occurred, I hope that he will not make a point of it at a further date and that we may get on with the business.

I had nothing to do with the matter, and I regret that it happened. I feel that it was an unfortunate oversight.

Mr. HRUSKA. Mr. President, here is a bill that is law enforcement in its character, in its nature, in its very thrust. A hundred pages are devoted to that purpose. Fifty pages were added as an amendment here. Yet, we have five members from two committees, and they are on a parity with each other with reference to the entire bill.

I have no personal animosity to any of the members who have been named. I question the orderly procedure very seriously; and, notwithstanding the respectful request of the acting majority leader,

this Senator does reserve the point for future discussion.

Mr. DODD. Mr. President, I hope the Senator from Nebraska understands that I was only consulted as to the five members of the Judiciary Committee, and I did not have any knowledge about anybody else being appointed. However, it does not bother me now that others were named, for reasons I gave earlier. I wish the Senator from Nebraska would understand. Why not get their views and sit down with them and try to work it out?

TRANSACTION OF ADDITIONAL ROUTINE BUSINESS

By unanimous consent, the following additional routine business was transacted:

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

AMENDMENT NO. 1035

Mr. STEVENS. Mr. President, I submit an amendment and ask that it be printed. This amendment would add a new title to the Omnibus Crime Control Safe Streets Act Amendments of 1970 (H.R. 17825) authorizing awards to law-enforcement officers for extraordinary valor in the line of duty and for exceptional contribution in the field of law enforcement.

A little less than 2 years ago, certain elements of our society found it convenient, and even popular, to attempt to make a policeman or a fireman the scapegoat of the various ills affecting our great Nation. The cries of gestapo and pig reverberated through our streets and campuses and came directly into our homes via television and radio. This development was a national disgrace.

As a former U.S. attorney, a former State legislator, and as a U.S. Senator, I am pleased to see this un-American phenomenon fade from our national scene. The determination of President Nixon to restore the faith and respect of this Nation in our peace officers, the sense of urgency felt in Congress to stop the unprecedented and unparalleled wave of lawlessness in our Nation, and the recognition by the law enforcement leaders of our communities of the need to be responsible to as well as responsible for, the public has served to strengthen the forces of law, order, and justice. It is only fit and proper that the devoted men and women who risk their very lives to protect us from those in our society who endanger our lives and destroy our property in violation of our laws be afforded a formalized and continued manner of national recognition.

It is with this goal in mind that I originally introduced a bill to create these law enforcement awards. The Department of Justice has indicated its strong support of the bill. Unfortunately, because of the press of time, the Judiciary Committee, which has been doing a tremendous job in getting this crime bill ready, has not been able to report on my original measure.

I am therefore offering the substance of my bill as an amendment to the Omnibus Crime Control and Safe Streets Act Amendments of 1970 now before us. I hope this amendment will have the support of the distinguished Senator from Arkansas (Mr. MCCLELLAN) and the distinguished Senator from Nebraska (Mr. HRUSKA).

I ask unanimous consent that the amendment be printed in the RECORD at this point.

The PRESIDING OFFICER (Mr. EAGLETON). The amendment will be received and printed, and will lie on the table; and, without objection, the amendment will be printed in the RECORD.

The amendment (No. 1035) is as follows:

AMENDMENT NO. 1035

On page , line , insert the following new title:

"TITLE —PRESIDENT'S AWARD FOR DISTINGUISHED LAW ENFORCEMENT SERVICE

"SEC. . This title may be cited as the "Distinguished Law Enforcement Service Act".

"SEC. . There is hereby established an honorary award for the recognition of outstanding service by law enforcement officers of State, county, or local governments. The award shall be known as the President's Award for Distinguished Law Enforcement Service. Each award shall be suitably inscribed and an appropriate citation shall accompany each award.

"SEC. . The President's Award for Distinguished Law Enforcement Service shall be presented by the President, in the name of the President and the Congress of the United States, to law enforcement officers, including corrections officers, for extraordinary valor in the line of duty or for exceptional contribution in the field of law enforcement.

"SEC. . The Attorney General shall advise and assist the President in the selection of persons to whom the award shall be tendered. In performing this function, the Attorney General shall review recommendations submitted to him by State, county, or local government officials, and shall decide which of them, if any, warrant presentation to the President. The Attorney General shall transmit to the President the names of those persons determined by the Attorney General to merit the award, together with the reasons therefor. Recipients of the award shall be selected by the President.

"SEC. . There shall not be awarded in any one calendar year in excess of twelve such awards.

"SEC. . The Department of Justice shall list in its annual budget request a sum of money equal to that necessary to carry out the provisions of this Act."

AMENDMENTS NOS. 1036 AND 1037

Mr. HART. Mr. President, I am submitting today two amendments intended to be proposed by me to H.R. 17825, which will be considered by the Senate shortly. These amendments would strengthen the Safe Streets Act by insuring, first, that the Law Enforcement Assistance Administration has adequate resources for the urgent task of aiding local law enforcement and, second, by insuring that the added moneys are channeled where the need is greatest. I offered esesntially similar amendments in the Committee on the Judiciary.

One amendment would increase the funds available for discretionary grants from the LEAA directly to local agencies. This would enable LEAA to give extra support to local law enforcement in high crime urban areas; it would "put the money where the crime is."

The second amendment would increase the overall authorization for the safe streets program from the level proposed by the committee bill. For fiscal 1971, my amendment would authorize a full $1 billion, while the committee bill authorizes only $650 million. The amendment authorizes $1.5 billion and $2 billion in fiscal 1972 and 1973, respectively. The committee bill authorizes only $1,150 million and $1,750 million for those 2 years.

These higher funding levels for LEAA would permit the program of block grants to the States to continue undiminished even though the discretionary grant portion is increased. In fact, under my amendments more financial aid would be available for block grants than would be available under the present 85-percent allocation to block grants at the funding levels in the committee bill.

I ask unanimous consent that the amendments be printed and that they also be printed in the RECORD at the conclusion of these remarks.

The PRESIDING OFFICER (Mr. HANSON). The amendments will be received and printed, and will lie on the table; and, without objection, the amendments will be printed in the RECORD.

The amendments (Nos. 1036 and 1037) are as follows:

AMENDMENT NO. 1036

On page 33, line 3, strike "$650,000,000" and insert "$1,000,000,000" in lieu thereof,

On page 33, line 5, strike "$1,150,000,000" and insert "$1,500,000,000" in lieu thereof, and

On page 33, line 7, strike "$1,750,000,000" and insert "$2,000,000,000" in lieu thereof.

AMENDMENT NO. 1037

On page 21, line 17, strike "Eighty five per centum" and insert in lieu thereof "Sixty six and two-thirds per centum," and on line 23, strike "Fifteen per centum" and insert in lieu thereof "Thirty three and one-third per centum."

AMENDMENT OF SECTION 837, TITLE 18, UNITED STATES CODE—AMENDMENT

AMENDMENT NO. 1038

Mr. HART submitted an amendment, intended to be proposed by him, to the bill (S. 3650) to amend section 837 of title 18, United States Code, to strengthen the laws concerning illegal use, transportation, or possession of explosives and the penalties with respect thereto, and for other purposes, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 1040

Mr. HRUSKA submitted an amendment, intended to be proposed by him, to Senate bill 3650, supra, which was ordered to lie on the table and to be printed.

ASSAULT, ASSASSINATION, OR KIDNAPING OF A MEMBER OF CONGRESS OR A MEMBER OF CONGRESS-ELECT—AMENDMENT

AMENDMENT NO. 1039

Mr. HART submitted an amendment, intended to be proposed by him, to the bill (S. 642) to make it a Federal offense to assassinate, kidnap, or assault a Member of Congress or a Member of Congress-elect, which was ordered to lie on the table and to be printed.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 8 o'clock and 59 minutes p.m.) the Senate adjourned until tomorrow, Thursday, October 8, 1970, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 7, 1970:

OFFICE OF ECONOMIC OPPORTUNITY

John Oliver Wilson, of Connecticut, to be an Assistant Director of the Office of Economic Opportunity, vice William P. Kelly, Jr.

BUREAU OF MINES

Elburt Franklin Osborn, of Pennsylvania, to be Director of the Bureau of Mines, vice John F. O'Leary, resigned.

U.S. ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Jonathan Owen Seaman, xxx-xx-x... xxx-... Army of the United States (major general, U.S. Army).

The following-named officers to be placed on the retired list in grades indicated under the provisions of title 10, United States Code, section 3962:

To be general

Gen. Ferdinand Joseph Chesarek, xxx-xx-x... xxx-... Army of the United States (major general, U.S. Army).

To be lieutenant general

Lt. Gen. Austin Wortham Betts, xxx-xx-xx... xxx-... Army of the United States (major general, U.S. Army).

UNESCO REPRESENTATIVES

The following-named persons to be representatives of the United States of America to the 16th session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

John Richardson, Jr., of Virginia.
Louise Gore, of Maryland.
Pierre R. Graham, of Illinois.
Harold Taft King, of Colorado.
Kimon T. Karabatsos, of Virginia.

The following-named persons to be alternate representatives of the United States of America to the 16th session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Edward T. Brennan, of Massachusetts.
Edward O. Sullivan, Jr., of New York.
R. Miller Upton, of Wisconsin.
Tom R. Van Sickle, of Kansas.

Louise Gore, U.S. member of the Executive Board of the United Nations Educational, Scientific, and Cultural Organization, to serve on the Executive Board with the rank of Ambassador.

U.S. CIRCUIT COURTS

Paul H. Roney of Florida, to be a U.S. circuit judge, fifth circuit, vice George H. Carswell, resigned.

U.S. DISTRICT COURTS

William C. Frey, of Arizona, to be a U.S. district judge for the district of Arizona vice a new position created by Public Law 91–272, approved June 2, 1970.

Samuel Conti, of California, to be a U.S. district judge for the northern district of California vice a new position created by Public Law 91–272, approved June 2, 1970.

Gordon Thompson, Jr., of California, to be a U.S. district Judge for the southern district of California vice a new position created by Public Law 91–272, approved June 2, 1970.

J. Clifford Wallace, of California, to be a U.S. district judge for the southern district of California vice a new position created by Public Law 91–272, approved June 2, 1970.

Peter T. Fay, of Florida, to be a U.S. district judge for the southern district of Florida vice a new position created by Public Law 91–272, approved June 2, 1970.

James L. King, of Florida, to be a U.S. district judge for the southern district of Florida vice a new position created by Public Law 91–272, approved June 2, 1970.

Gerald B. Tjoflat, of Florida, to be a U.S. district judge for the middle district of Florida vice a new position created by Public Law 91–272, approved June 2, 1970.

Charles A. Moye, Jr., of Georgia, to be U.S. district judge for the northern district of Georgia vice a new position created by Public Law 91–272, approved June 2, 1970.

William C. O'Kelley, of Georgia, to be a U.S. district judge for the northern district of Georgia vice a new position created by Public Law 91–272, approved June 2, 1970.

C. Rhodes Bratcher, of Kentucky, to be a U.S. district judge for the western district of Kentucky vice a new position created by Public Law 91–272 approved June 2, 1970.

John Feikens, of Michigan, to be a U.S. district judge for the eastern district of Michigan vice a new position created by Public Law 91–272 approved June 2, 1970.

Philip Pratt, of Michigan, to be a U.S. district judge for the eastern district of Michigan vice a new position created by Public Law 91–272 approved June 2, 1970.

Clarkson S. Fisher, of New Jersey, to be a U.S. district judge for the district of New Jersey vice Reynier J. Wortendyke, Jr., a retired.

John J. Kitchen, of New Jersey, to be a U.S. district judge for the district of New Jersey vice a new position created by Public Law 91–272 approved June 2, 1970.

Frederick B. Lacy, of New Jersey, to be a U.S. district judge for the district of New Jersey vice a new position created by Public Law 91–272, approved June 2, 1970.

Robert B. Krupansky, of Ohio, to be a U.S. district judge for the northern district of Ohio, vice a new position created by Public Law 91–272 approved June 2, 1970.

Nicholas J. Walinski, Jr., of Ohio, to be U.S. district judge for the northern district of Ohio, vice Gerald E. Kalbfleisch, retired.

Owen D. Cox, of Texas, to be a U.S. district judge for the southern district of Texas vice a new position created by Public Law 91–272 approved June 2, 1970.

Robert M. Hill, of Texas, to be a U.S. district judge for the northern district of Texas vice a new position created by Public Law 91–272 approved June 2, 1970.

William M. Steger, of Texas, to be U.S. district judge for the eastern district of Texas vice a new position created by Public Law 91–272 approved June 2, 1970.

John H. Wood, Jr., of Texas, to be a U.S. district judge for the western district of Texas vice a new position created by Public Law 91–272, approved June 2, 1970.

DEPARTMENT OF JUSTICE

George J. Long, Jr., of Kentucky, to be U.S. attorney for the western district of Kentucky for the term of 4 years vice Ernest W. Rivers, resigned.

EXTENSIONS OF REMARKS

POPE PAUL VI AND PRESIDENT NIXON SEND GREETINGS TO THE MOST REVEREND CHRISTOPHER J. WELDON, D.D., FOURTH BISHOP OF ROMAN CATHOLIC DIOCESE OF SPRINGFIELD, MASS., AND TO PEOPLE OF GOD IN THE DIOCESE ON OCCASION OF 100TH ANNIVERSARY OF ESTABLISHMENT OF DIOCESE OF SPRINGFIELD BY POPE PIUS IX IN 1870

HON. EDWARD P. BOLAND

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1970

Mr. BOLAND. Mr. Speaker, the 100th anniversary of the creation of the Roman Catholic diocese of Springfield, Mass., was celebrated in solemn and memorable services in St. Michael's Cathedral, Springfield, on Saturday, September 26.

More than 1,000 of the people of God assembled in the beautiful cathedral for the Mass of Thanksgiving, whose principal celebrant was the Most Reverend Luigi Raimondi, apostolic delegate to the United States, who imparted the apostolic blessing of Pope Paul VI on those attending.

The mass was sung in the presence of more than a score of archbishops, bishops, monsignori, priests, and nuns of the diocese. Adding an ecumenical note to the occasion was the presence of the Right Reverend Alexander D. Stewart, the new and recently consecrated bishop of the Episcopal diocese of western Massachusetts; Rabbi Herman E. Snyder, rabbi emeritus of Sinai Temple in Springfield, and several ministers of Protestant denominations.

Concelebrating the mass with Archbishop Raimondi were the Most Reverend Christopher J. Weldon, D.D., fourth bishop of the diocese of Springfield; Auxiliary Bishop Thomas J. Riley of the mother archdiocese of Boston; Bishop Bernard J. Flanagan of Worcester and Auxiliary Bishop Timothy J. Harrington of the diocese of Worcester; the Right Reverend Monsignor Walter C. Connell, prothonotary apostolic and vicar general of the Springfield diocese; Rt. Rev. Msgr. Timothy J. Leary, rector of St. Michael's Cathedral; Rt. Rev. Msgr. Eugene E. Guertin, pastor of St. Rose de Lima Church, Aldenville, Mass.; Rev. John E. Aubertin, pastor of St. John Cantius Church, Northampton, Mass.; Very Rev. Adam Zajdel, O.F.M. Conv., president of St. Hyacinth College and Seminary, Granby, Mass., and Rev. Camillo Santini, C.S.S., pastor of Our Lady of Mount Carmel Church, Springfield.

Mr. Speaker, I attended the Thanksgiving mass and the dinner which followed with my colleague from western Massachusetts, Congressman SILVIO O. CONTE, whose congressional district also embraces the diocese of Springfield. Joining