Energy Commission allotment account, pursuant to section 3679 of the Revised Statutes, as amended; to the Committee on Appropriations.

2452. A letter from the Director of Civil Defense, Department of the Army, transmitting the report on property acquisitions of emergency supplies and equipment for the quarter ended September 30, 1970, pursuant to section 201(h) of the Federal Civil Defense Act of 1950, as amended; to the Committee on Armed Services.

2453. A letter from the Secretary of the Army, transmitting a letter from the Chief of Engineers, Department of the Army, dated May 12, 1970, submitting a report, together with accompanying papers and illustrations, on Delaware Bay-Chesapeake Bay Waterway in Delaware, Maryland, and Virginia requested by four resolutions of the Committee on Public Works, U.S. Senate, adopted July 6, 1955, March 14, 1957, June 30, 1960, and August 25, 1966, and one by the Committee on Public Works, House of Representatives, adopted June 30, 1960. It is also in partial response to the River and Harbor Act approved July 3, 1958 (H. Doc. 91–400); to the Committee on Public Works and ordered to be printed with illustrations.

2454. A letter from the Secretary of the Army, transmitting a letter from the Chief of Engineers, Department of the Army, dated June 19, 1970, submitting a report, together with accompanying papers and illustrations, on Tampa Harbor, Fla., requested by two resolutions of the Committee on Public Works, U.S. Senate, adopted January 18, 1957, and May 4, 1962, and three resolutions of the Committee on Public Works, House of Representatives, adopted April 9, 1957, June 19, 1963, and June 23, 1964 (H. Doc. 91–401); to the Committee on Public Works and ordered to be printed with illustrations.

2455. A letter from the Secretary of the Army, transmitting a letter from the Chief of Engineers, Department of the Army, dated May 14, 1970, submitting a report, together with accompanying papers and an illustration, on Geneva-on-the-Lake, Ohio, in partial response to authorizations contained in the River and Harbor Act approved March 2, 1945. (H. Doc. 402); to the Committee on Public Works and ordered to be printed with an illustration.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[*Pursuant to the order of the House on Oct. 7, 1970, the following conference report was filed on Oct. 9, 1970*]

Mr. RIVERS: Committee of conference. Conference report on H.R. 17604 (Rept. No. 91–1593). Ordered to be printed.

[*Pursuant to the order of the House on Oct. 8, 1970, the following conference report was filed on Oct. 9, 1970*]

Mr. POAGE: Committee of conference. Conference report on H.R. 18546 (Rept. No. 91–1594). Ordered to be printed.

[*Submitted Oct. 12, 1970*]

Mr. DAWSON: Committee on Government Operations. The Port Situation in Vietnam (Following investigation) (Rept. No. 91–1595). Referred to the Committee of the Whole House on the State of the Union.

Mr. McMILLAN: Committee on the District of Columbia. H.R. 18782. A bill to reorganize the government of the District of Columbia by establishing a Council of the District of Columbia to replace the Commissioner of the District of Columbia and the District of Columbia Council, and for other purposes (Rept. No. 91–1596). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. S. 2543. An act to prohibit the movement in interstate or foreign commerce of horses which are "sored", and for other purposes; with amendments (Rept. No. 91–1597). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ABBITT:

H.R. 19676. A bill to amend the Internal Revenue Code of 1954 to permit a taxpayer to deduct certain expenses paid by him for special education furnished to a child or other minor dependent who is physically or mentally handicapped; to the Committee on Ways and Means.

By Mr. MACGREGOR:

H.R. 19677. A bill to provide a penalty for unlawful assault upon policemen, firemen, and other law enforcement personnel, and for other purposes; to the Committee on the Judiciary.

By Mr. MELCHER:

H.R. 19678. A bill to amend the Packers and Stockyards Act, as amended, so as to provide for specifications for trimming carcasses in purchases of livestock on a carcass weight basis, and for other purposes; to the Committee on Agriculture.

H.R. 19679. A bill to authorize the Secretary of Agriculture to provide for the inspection of facilities used in the harvesting and processing of fish and fishery products for commercial purposes, for the inspection of fish and fishery products, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. MONAGAN:

H.R. 19680. A bill to direct the Secretary of Health, Education, and Welfare to establish and carry out a bottled drinking water control program; to the Committee on Interstate and Foreign Commerce.

By Mr. RYAN:

H.R. 19681. A bill; National Public Employee Relations Act; to the Committee on Education and Labor.

By Mr. YOUNG:

H.R. 19682. A bill to remove logjams, Lower Guadalupe River, Tex., to the Committee on Public Works.

By Mr. EDWARDS of California:

H. Res. 1247. Resolution on dismissal of professional air traffic controllers by the Federal Aviation Administration; to the Committee on Interstate and Foreign Commerce.

By Mr. HARSHA (for himself and Mr. WINN):

H. Res. 1248. Resolution to authorize the Committee on Post Office and Civil Service to conduct an investigation and study of the methods, procedures, and operations of the Commission on Obscenity and Pornography; to the Committee on Rules.

By Mr. MILLER of California:

H. Res. 1249. Resolution authorizing reprinting of House Report No. 1446; to the Committee on House Administration.

By Mr. PEPPER (for himself, Mr. ADAMS, Mr. BROWN of California, Mrs. CHISHOLM, Mr. FASCELL, Mr. WILLIAM D. FORD, Mr. MATSUNAGA, Mr. MIKVA, Mr. MOORHEAD, Mr. REES, and Mr. SISK):

H. Res. 1250. Resolution on dismissal of professional air traffic controllers by the Federal Aviation Administration; to the Committee on Interstate and Foreign Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. ROUSSELOT introduced a bill (H.R. 19683) for the relief of Beata Both, which was referred to the Committee on the Judiciary.

PETITIONS, ETC.

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

618. By the SPEAKER: Petition of the 1970 annual meeting of the Knights of Columbus Supreme Council, relative to the principle of "local community standards" in the determination of obscene materials; to the Committee on the Judiciary.

619. Also, petition of the city council, Cambridge, Mass., relative to emergency unemployment grants for cities with high unemployment; to the Committee on Ways and Means.

SENATE—*Monday, October 12, 1970*

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

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

Most merciful God, the fountain of all grace and the source of true wisdom and goodness, through the stress of strenuous hours in these tumultuous times, steady our minds moment by moment with the consciousness of Thy presence. Make us to know that it is not by revolution but by the redemptive love made known in the Man of Galilee that man is saved from self-made evils. Bestow upon us the mind and spirit that was His, that we may better serve our fellow man.

O Lord, regard Thy children who live in this privileged land, and bring us to a new unity, to solve by Thy help the problems of poverty, ignorance, and injustice. Forge us into one mighty people, great in charity and good will, "strong in the Lord and in the power of His might," for the making of Thy kingdom on earth.

In the Redeemer's name. Amen.

REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of February 7, 1969, Mr. MANSFIELD, from the Committee on Appropriations, reported favorably, with amendments, on October 9, 1970, the bill (H.R. 17970) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1971, and for other purposes, and submitted a report (No. 91–1318) thereon, which was printed.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

THE JOURNAL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, October 9, 1970, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. METCALF) 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.)

WAIVER OF THE CALL OF THE CALENDAR

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

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

COMMITTEE MEETING DURING SENATE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on the District of Columbia be authorized to meet during the session of the Senate today.

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

ORDER FOR RECOGNITION OF SENATOR YOUNG OF OHIO ON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following disposition of the reading of the Journal on tomorrow and the disposition of any unobjected-to items on the Legislative Calendar, the able Senator from Ohio (Mr. YOUNG) be recognized for not to exceed 15 minutes.

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

THE CALENDAR

Mr. BYRD of West Virginia. 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. 1308 and going through Calendar No. 1324, with the exception of Calendar No. 1313.

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

ASSERTION OF CERTAIN LAND CLAIMS BY THE UNITED STATES

The bill (H.R. 15405) to render the assertion of land claims by the United States based upon accretion or avulsion subject to legal and equitable defenses to which private persons asserting such claims would be subject, was considered, ordered to a third reading, read the third time, and passed.

FLORIDA-GEORGIA COMPACT

The Senate proceeded to consider the joint resolution (S.J. Res. 165) granting the consent of the Congress to an agreement between the State of Florida and the State of Georgia establishing a boundary between such States, which had been reported from the Committee on the Judiciary with amendments on page 2, after line 6, insert a new section, as follows:

SEC. 2. The Secretary of Commerce is hereby authorized, empowered, and instructed to survey and properly mark by suitable monuments the seaward boundary between the State of Florida and State of Georgia, and so much of the interior boundary as is considered necessary by the two States, and the necessary appropriations for this work are hereby authorized.

On page 3, after line 5, insert a new section, as follows:

SEC. 3. The right to alter, amend, or repeal this Act is expressly reserved.

The amendments were agreed to.

The resolution as amended was agreed to.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

Whereas the Legislature of the State of Florida passed an act amending section 6.09 Florida Statutes, relating to the boundary between the States of Florida and Georgia which was approved by the Governor of the State of Florida on April 25, 1969; and

Whereas the Legislature of the State of Georgia passed an act amending Georgia Code section 15–105, relating to the boundary between such States, which was approved by the Governor of Georgia on April 25, 1969; and

Whereas such acts both provide in substance that such acts would be effective only if the Congress of the United States ratifies, confirms, adopts, or otherwise consents to the effect of such acts by November 1, 1970; and

Whereas such acts both provided in substance that the boundary between such States at the mouth of the Saint Marys River and adjacent thereto should be as follows: From a point 37 links north of Ellicotts Mound on the Saint Marys River; thence down said river to the Atlantic Ocean; thence along the middle of the presently existing Saint Marys entrance navigational channel to the point of intersection with a hypothetical line connecting the seawardmost points of the jetties now protecting such channel; thence along said line to a control point of latitude 30 degrees 42 minutes 45.6 seconds north, longitude 81 degrees 24 minutes 15.9 seconds west, thence due east to the seaward limit of Georgia and Florida as now or hereafter fixed by the Congress of the United States; such boundary to be extended on the same true 90-degree bearing so far as a need for further delimitation may arise; and

Whereas such acts of the States of Florida and Georgia constitute an agreement between such States establishing a boundary line between them: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress is hereby granted to such agreement and to the establishment of such boundary, and such acts of the States of Florida and Georgia are hereby approved.

SEC. 2. The Secretary of Commerce is hereby authorized, empowered, and instructed to survey and properly mark by suitable monuments the seaward boundary between the State of Florida and State of Georgia, and so much of the interior boundary as is considered necessary by the two States, and the necessary appropriations for this work are hereby authorized.

SEC. 3. The right to alter, amend, or repeal this Act is expressly reserved.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1291), explaining the purpose of the measure.

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

PURPOSE OF THE AMENDMENTS

The purpose of the amendments is (1) to authorize the Secretary of Commerce to survey the boundary, and to authorize the appropriations for this work and (2) to reserve to the Congress the customary right to alter, amend, or repeal this act.

PURPOSE

The purpose of the resolution is to grant the consent of Congress to an agreement between the State of Florida and the State of Georgia establishing a boundary between the two States.

STATEMENT

The Department of Commerce in its report to the committee has set forth the following:

The resolution would grant the consent of Congress to the seaward extension of the boundary between Florida and Georgia. The seaward extension of the boundary would be due east and would extend to the seaward limit of Florida and Georgia "as now or hereafter fixed by the Congress of the United States; such boundary to be extended on the same true 90° bearing so far as a need for further delimitation may arise." The boundary has already been accepted by the States of Florida and Georgia in acts wihch provide that the boundary will be effective only if the Congress of the United States ratifies, confirms, adopts, or otherwise consents to the effect of such acts by November 1, 1970.

The Department of Commerce has a historic interest in boundaries in the coastal zone. The Environmental Science Services Administration's Coast and Geodetic Survey is the agency of the United States statutorily responsible for the determination of the high-water line and the low-water line throughout the coastal zone, lines which are the legal basis for determining domestic property boundaries and the offshore boundary of the territorial sea of the United States. The lateral extension of state boundaries seaward to the limit of State jurisdiction is pertinent to the coastal zone boundary determinations that are within the purview of this Department.

We favor the statutory establishment of lateral boundaries between all of the coastal States and believe the Federal Government should provide guidelines and assistance to States concerned with the establishment of such boundaries. In this regard we urge that boundaries be precisely described and that the latitude and longitude of points along boundaries be geodetically determined at least to the nearest 100th of a second. The

value of offshore resources has been demonstrated to be increasingly significant, and the need for well-defined boundaries is evident. Further, such boundaries must be physically recoverable whether or not the boundaries are visible on the surface. Geodetic surveys tied into the national geodetic network are essential in establishing monumented points both on land and in the marine environment to fix the seaward boundaries.

To insure that interstate seaward boundaries be established by geodetic surveys compatible with State and Federal accuracy requirements we strongly urge that this Department be designated the department to survey and monument such boundaries. Accordingly, we suggest the resolution be amended to provide that "The Secretary of Commerce is hereby authorized, empowered, and instructed to survey and properly mark by suitable monuments the seaward boundary between the State of Florida and State of Georgia, and so much of the interior boundary as is considered necessary by the two States, and the necessary appropriations for this work are hereby authorized."

This language is compatible with the statutory responsibility of the Department of Commerce (33 U.S.C. 883a, 883e) and with previous specific boundary surveying authority (e.g. Public Law 208 of the 79th Cong.; 59 Stat. 553 and Public Law 342 of the 84th Cong.; 69 Stat. 633).

In our view the boundary description contained in the compact between the States of Florida and Georgia is not sufficiently precise to avoid future controversy. However, the inadequacies of the written description can be obviated by employing precise geodetic surveys to locate the boundary. The position of the boundary based on such surveys will take precedence where the written description is otherwise imprecise.

We have discussed this matter with representatives from Florida and Georgia and have mutually agreed that it is not necessary to rewrite the boundary description providing the boundary is located with geodetic surveys. Accordingly, we would not oppose this resolution if it is amended as suggested above.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report from the standpoint of the administration's program.

The committee believes that the resolution as amended is meritorious and recommends it favorably.

RESIDENTIAL COMMUNITY TREATMENT CENTERS

The bill (H.R. 2175) to amend title 18 of the United States Code to authorize the Attorney General to admit to residential community treatment centers persons who are placed on probation, released on parole, or mandatorily released was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1292), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to authorize the Attorney General to admit to residential community treatment centers persons who are placed on probation, released on parole, or mandatorily released.

STATEMENT

The committee had before it a companion Senate bill, S. 3261, introduced by the Honorable Quentin N. Burdick, on which hearings were held before the Subcommittee on National Penitentiaries of the Senate Committee on the Judiciary and which has been favorably reported by the subcommittee.

In its favorable report on the House bill H.R. 2175, the Committee on the Judiciary of the House of Representatives said:

Under the provisions of section 4082 of title 18, United States Code, the Attorney General has established residential community treatment centers. These centers provide counseling and guidance for prisoners whose period of confinement is nearing an end. They are intended to provide assistance in the transition from imprisonment to life in a free community.

Under existing law, residence at these centers is limited to persons in the custody of the Attorney General. It is not available to persons who are placed on probation or who are released on parole or mandatory release.

The purpose of H.R. 2175 is to authorize the placement in these centers of persons who have been placed on probation or who are released on parole or mandatory release.

The centers provide basic necessities such as room, board, and medical care and provide supervision, counseling, and assistance in obtaining employment. Persons who are placed in these centers defray all or part of the costs if they are financially able.

The subject legislation was originally introduced by Chairman Celler as H.R. 10511, 90th Congress, at the request of the Department of Justice. In the 91st Congress the Department continues to favor the legislation and has testified in support of it. Further, the committee is advised that the Judicial Conference of the United States has on three separate occasions endorsed this proposal and that the latest such endorsement was made in March 1970 with respect to S. 3261 which is identical to H.R. 2175, as introduced.

The committee believes that the bill is meritorious and recommends it favorably.

PUBLIC USE OF CERTAIN PROPERTY IN GEORGIA

The bill (H.R. 9164) to permit the use for any public purpose of certain real property in the State of Georgia was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1294), 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 would permit the State of Georgia, to use, for any public purpose, certain lands previously conveyed to it, notwithstanding limitations on use in the instrument of conveyance.

BACKGROUND

H.R. 9164 involves 6.4 acres of land located in Whitfield County, Ga. This land, known as the Rocky Face Ridge Site, was designated in 1944 as part of the Atlantic Campaign National Historic Site by the Secretary of the Interior. Subsequently, the tract was developed to commemorate the Civil War engagements between the Confederate and Union forces in the Atlantic campaign.

In 1950, by the act of Septemebr 21, 1950, Congress authorized the Secretary of the Interior to convey this site, as well as others, to the State of Georgia. The conveyance was made "without consideration, for public use as a part of the park system" of Georgia. The actual transfer to the State was made by quitclaim deed, which recited this limitation, in 1952. Thereafter, jurisdiction over the property was transferred from the Georgia Department of State Parks, Historic Sites, and Monuments to the State highway department. That department has maintained the property as roadside park since that time. The tract has been poorly maintained and apparently received little use for park purposes in its present condition.

The State of Georgia wishes to transfer the 6.4 acres to the State highway patrol for use as a highway patrol headquarters. Construction of a barracks building is planned, but it would be located well off the highway and would not interfere with the historical and park uses of the land. The highway patrol plans to restore the park to its proper condition and thereafter to maintain it in a manner that would be more attractive to future public use and enjoyment.

To permit this use by the State highway patrol, enactment of legislation along the line of H.R. 9164 is needed, because of the 1950 statutory restriction, previously referred to, that the tract be used "as a part of the park system" of the State of Georgia. The use of a significant portion of the tract as a police barracks would be inconsistent with this requirement.

The committee is of the opinion that the restriction on the use of this land no longer serves a useful purpose. The condition of the tract has deteriorated, and it has not been properly maintained. Its transfer to the State highway patrol would assure better utilization of the land as well as its proper maintenance as a historical commemorative site and as a roadside park. The construction of the police barracks will not detract from its historic value and will make it more attractive for public use.

The House of Representatives amendment provides that the United States consents to the use of the tract for any public purpose notwithstanding the 1950 act and the deed which limited the use of the land to use as a part of the State park system. This amendment accomplishes the same objective as that proposed by the Department of the Interior, and resolves a technical drafting problem. The Senate Interior and Insular Affairs Committee concurs in this action.

COST

Enactment of the bill will involve no additional cost to the Federal Government.

McNARY DAM TOWNSITE, UMATILLA COUNTY, OREG.

The bill (H.R. 13601) to release and convey the reversionary interest of the United States in real property known as the McNary Dam Townsite, Umatilla County, Oreg., was considered, ordered to a third reading, read the third time, and passed.

POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY AMENDMENTS OF 1970

The Senate proceeded to consider the bill (S. 2695) to provide for the retirement of officers and members of the Metropolitan Police force, the Fire Department of the District of Columbia, the U.S. Park Police force, the White House Police force, and of certain officers and members of the U.S. Secret Service, and for other purposes which had been reported from the Committee on the District of Columbia with an amendment to

strike out all after the enacting clause and insert:

That section 12 of the Act of September 1, 1916 (39 Stat. 718), as amended (D.C. Code, sec. 4–521 et seq. is amended as follows:

(1) Paragraph (4) of subsection (a) of such section (D.C. Code, sec. 4–521) is amended to read as follows:

"(4) The term 'widower' means the surviving husband of a member who was married to such individual while she was a member.".

(2) Paragraph (5) of subsection (a) of such section (D.C. Code, sec. 4–521) is amended to read as follows:

"(5)(A) The term 'child' means an unmarried child, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lives with the member in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before the age of eighteen, is incapable of self-support.

"(B) The term 'student child' means an unmarried child who is a student between the ages of eighteen and twenty-two years, inclusive, and who is regularly pursuing a full-time course of study or training in residence or in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized education institution.".

(3) Subsection (d) of such section (D.C. Code, sec. 4–524) is amended as follows:

(A) Paragraph (1) of such subsection is amended to read as follows:

"(1) On and after the first day of the first pay period which begins on or after the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970 there shall be deducted and withheld from each member's basic salary an amount equal to 7 per centum of such basic salary. Such deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia, and shall be deposited in the Treasury to the credit of the District of Columbia.".

(B) Paragraph (3) of such subsection is amended by inserting immediately before the period at the end thereof a colon and the following: *"Provided,* That if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia.".

(C) Such subsection is amended by adding at the end thereof the following new paragraph:

"(4) In order to facilitate the settlement of the accounts of each former member coming under the provisions of this section who dies after retirement (1) leaving no survivor entitled to receive an annuity under the provisions of this section and (2) before the aggregate amount of the annuity paid to such former member equals the total amount deducted and withheld for retirement from his salary as a member, the Commissioner shall pay the difference to the person or persons surviving at the time of death in the following order of precedence, and such payment shall be a bar to recovery by any other person of the amount so paid:

"First, to the beneficiary or beneficiaries designated in writing by such former member, filed with the Commissioner and received by him prior to the death of such former member;

"Second, if there be no such beneficiary, to the child or children of such deceased former member and the descendants of deceased children by representation;

"Third, if there be none of the above, to the parents of such former member, or the survivor of them; and

"Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased former member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased former member: *Provided,* That if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia."

(4) Subsection (g) of such section (D.C. Code, sec. 4–527) is amended by deleting "2 per centum" wherever it appears therein and inserting in lieu thereof "2½ per centum".

(5) Paragraph (1) of subsection (h) of such section (D.C. Code, sec. 4–528) is amended—

(A) by striking out "attains the age of fifty years and"; and

(B) by striking out "2 per centum" and inserting in lieu thereof "2½ per centum".

(6) Paragraph (3) of subsection (h) of such section is amended by striking out "70 per centum" and inserting in lieu thereof "80 per centum".

(7) Subsection (j) of such section (D.C. Code, sec. 4–530) is amended by deleting "fifty-five" wherever it appears therein and inserting in lieu thereof "fifty".

(8) Subsection (k) of such section (D.C. Code, sec. 4–531) is amended to read as follows:

"(k)(1) In the event that any member dies in the performance of duty, and such death is determined by the Commissioner to have been the sole and direct result of a personal injury sustained while performing such duty, leaving a survivor who received more than one-half his support from a member, such survivor shall be entitled to receive a lump sum payment of $50,000: *Provided,* That if such death is caused by the willful misconduct of the member or by the member's intention to bring about the death of himself, or if intoxication of the injured member is the proximate cause of such death, no such lump sum payment shall be made: *And provided further,* That if such member is survived by more than one person who received more than one-half of his support from the member, each such survivor shall be entitled to receive an equal share of such lump-sum payment.

"(2) In case of the death of any member before retirement, or of any former member after retirement, leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of (1) 40 per centum of such member's basic salary at the time of death, or 40 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, or (2) 40 per centum of the corresponding salary for step 6, subclass (a), class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death: *Provided,* That such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

"(3) Each surviving child or student-child of any member who dies before retirement, or of any former member who dies after retirement, shall be entitled to receive an annuity equal to the smallest of (1) 60 per centum of the member's basic salary at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) $996; or (3) $2,988 divided by the number of eligible children: *Provided,* That such member or former member is survived by a wife or husband. If such member or former member is not survived by a wife or husband, each surviving child or student-child shall be paid an annuity equal to the smallest of (1) 75 per centum of the member's basic salary at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) $1,200; or (3) $3,600 divided by the member of eligible children.

"(4) Each widow or widower who, on the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, was receiving relief or annuity computed in accordance with the provisions of this subsection shall be entitled to receive an annuity in the greater amount of (1) $3,144; or (2) 35 per centum of the basis upon which such relief or annuity was computed.

Each child who, on said effective date, was receiving relief or annuity computed in accordance with the provisions of this subsection, shall be entitled to benefits computed in accordance with the provisions of paragraph (3) of this subsection.

"(5) The annuity of any widow or widower under this subsection shall begin on the first day of the month in which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage before age sixty: *Provided,* That any annuity terminated by remarriage may be restored if such remarriage is later terminated by death, annulment, or divorce. The annuity of any child under this subsection shall begin on the first day of the month in which the member or former member dies, and such annuity of such child or any right thereto shall terminate upon (A) his attaining age eighteen, unless incapable of self-support, (B) his becoming capable of self-support after age eighteen, (C) his marriage, or (D) his death. The annuity of any student-child under this subsection shall begin on the first day of the month in which the member or former member dies, and such annuity of such child or any right thereto terminate upon (i) his ceasing to be a student, (ii) his attaining age twenty-two, (iii) his marriage, or (iv) his death. Such student-child whose birthday falls during the school year (September 1 to June 30) shall be considered not to have reached age twenty-two until July 1 following his actual twenty-second birthday.

"(6) Any member retiring under subsection (f), (g), or (h) of this section, may, at the time of such retirement, elect to receive a reduced annuity in lieu of full annuity, and designate in writing the person to receive an increased annuity after the retired annuitant's death: *Provided,* That the person so designated be the surviving spouse or child of the retiring member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such retiring member is reduced. The annuity payable to the member making such election shall be reduced by 10 per centum of the annuity computed as provided in subsection (f), (g), or (h). Such increase in annuity payable to the designee shall be reduced by 5 per centum for each full five years the designee is younger than the retiring member, but such total reduction shall not exceed 40 per centum. The increase in annuity payable to the designee pursuant to this paragraph shall be paid in addition to the annuity provided for such designee pursuant to paragraph (2) or (3) of this subsection and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to paragraphs (2), (3), and (5) of this subsection. If, at any time after such former member's retirement, the designee dies, and is survived by such former member, the annuity payable to such former member shall be increased to the amount computed as provided in subsection (f), (g), or (h).

"(7)(i) Each month after the effective date of this subsection the Commissioner shall determine the per centum change in the price index. On the basis of this determination, and effective the first day of the third month which begins after the price index shall have equaled the rise of at least

3 per centum for three consecutive months over the price index for the base month, each annuity payable under this subsection which has a commencing date not later than such effective date shall be increased by 1 per centum plus the per centum rise in the price index (calculated on the highest level of the price index during the three consecutive months) adjusted to the nearest one-tenth of 1 per centum.

"(ii) The monthly installment of annuity after adjustment under this subsection shall be fixed at the nearest dollar, except that such installment shall after adjustment reflect an increase of at least $1.

"(iii) For purposes of this subsection, the term 'price index' shall mean the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics. The term 'base month' shall mean the month for which the price index showed a per centum rise, forming the basis for a cost-of-living annuity increase."

SEC. 2. The provisions of this Act shall take effect on the first day of the first pay period which begins on or after the date of enactment.

SEC. 3. This Act may be cited as the "Policemen and Firemen's Retirement and Disability Act Amendments of 1970".

The amendment was agreed to.

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

The title was amended so as to read: "An act to provide for the retirement of officers and members of the Metropolitan Police force, the Fire Department of the District of Columbia, the U.S. Park Police force, the Executive Protective Service, and of certain officers and members of the U.S. Secret Service, and for other purposes."

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1297), 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 bill, S. 2695, as amended by the committee, will provide increases in retirement benefits for officers and members retiring under the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1961, as amended, as well as increases in benefits for survivors receiving or entitled to receive annuities under the act. The increases in retirement benefits will aid immeasurably in meeting the public safety needs of the District of Columbia by stimulating recruitment and retention of policemen and firemen. The survivor benefit liberalizations will provide long overdue annuity increases for widows, widowers, and children, whose basic benefits have remained unchanged since 1956.

Section 1

The first section of S. 2695 makes several. *Provisions of the bill* amendemnts to section 12 of the act approved September 1, 1916, as amended. They are as follows:

1. Removal of term "dependent widower"

Paragraph (1) amends subsection (a) of the section and substitutes the term "widower" (the surviving husband of a member of the force who was married to such individual while she was a member) for "dependent widower" in existing law. This amendment will insure equal benefits under the act for policewomen, who pay as much for their retirement protection as do their male coworkers.

2. Removal of one-half support requirement for children and addition of "student-child" definition

Paragraph (2) amends the definition of "child" to remove the requirement, for annuity entitlement purposes, that a stepchild or recognized natural child must receive more than one-half of his support from the member. This change is comparable to civil service and District teacher retirement legislation.

The paragraph also adds the definition of "student-child" for annuity entitlement purposes, which also is in accordance with civil service and District teacher retirement legislation.

3. Increase in members' salary deduction and new accounts settlement provision for deceased retirees leaving no survivors

Paragraph (3) changes subsection (d)(1) of the section to increase each member's salary deduction from 6½ to 7 percent of his basic salary. The higher deduction will result in an additional $319,000 per year being deposited in the Treasury to the credit of the District, based on present salary and manpower levels, thereby helping to offset part of the legislation's cost to the District. This salary deduction increase is consistent with the increase in the civil service retirement deduction enacted last year (Public Law 91–93) and in the District teacher retirement deduction enacted in May of this year (Public Law 91–263).

In addition to the increase in members' salary deduction, paragraph (3) adds a subsection (d)(4) to the section. The new subsection provides for the payment to a beneficiary or next of kin of the difference between the aggregate amount of annuity paid to a former member who dies after retirement leaving no survivor and the total amount deducted for retirement from the member's salary. This provision also is similar to a provision of civil service retirement and teacher retirement legislation.

Paragraph (3) further amends subsection (d) to provide that, if there is no natural person who would be a recipient of payments settling the accounts of members who die before retirement or former members who die after retirement leaving no survivors, such payments shall escheat to the District of Columbia.

4. Increase in disability retirement annuity computation

Paragraph (4) amends subsection (g) of the section to increase the rate at which the annuity of a member retired for disability incurred in or aggravated by performance of duty is computed from 2 to 2½ percent of his basic salary at time of retirement for each year of service. The increased computation rate would enable a member to receive the maximum annuity of 70 percent of basic salary after 28 years of service instead of the present 35 years.

5. Removal of age requirement and increase in annuities for optional retirement

Paragraph (5) amends subsection (h) of the section relating to optional retirement, to remove the age requirement of 50 and increase the rate at which the annuity of a member retiring optionally is computed from 2 to 2½ percent of basic salary at time of retirement for each year of service up to 20 years. The present rate of 3 percent for each year of service in excess of 20 years remains. Thus, upon completing the minimum 20 years of required police or fire service, a member, regardless of age, will now receive an annuity equal to 50 percent of his basic salary at time of retirement, up from the current 40 percent. Paragraph (6) further amends subsection (h) to increase the maximum annuity from 70 to 80 percent, reflecting the rate computation increase provided in paragraph (5).

The committee feels that these changes will offer an incentive for personnel in choosing and remaining in a career in the police or fire department. It believes that the provision allowing a member who spends 30 years in police or fire service to retire at 80 percent of salary will encourage longer service.

5. Reduction in age relative to cessation of disability annuity

Paragraph (7) of the bill amends subsection (j) of the section to reduce from 55 to 50 the age at which an annuity would cease should an annuitant recover from his disability.

7. Changes in survivor annuity benefits

Paragraph (8) amends subsection (k) in its entirety, making the following changes in survivor annuities:

a. *Lump-sum payment to dependents of members killed in the performance of duty.*—The committee believes that when a policeman or fireman dies in the performance of duty, compensation should be provided for his dependents in addition to the survivor annuities paid in the cases of all police and fire deaths. Paragraph (1) of subsection (k) will provide such compensation in the form of a lump-sum payment of $50,000, to be divided equally among those persons who received more than one-half their support from the deceased when he was alive.

b. *Increased annuity for new adult survivors.*—Paragraph (2) of subsection (k) increases the annuity of a widow or widower of a deceased member or of a former member who dies after retirement. At present, the annuity is the greater amount of (1) $1,800 per year ($150 per month) or (2) 30 percent of the member's basic salary at the time of his death or of the basis upon which the former member's annuity at the time of death was computed. The amendment will increase this annuity for new adult survivors to an amount at least equal to 40 percent of the corresponding salary for step 6, subclass (a), class 1 of the Police and Firemen's Salary Act salary schedule currently in effect at the time of the member's death (presently $10,965). The resultant minimum annuity will be $4,386 per year, or $366 per month.

c. *Increased annuities for surviving children.*—Under present law, an only child of a deceased member or former member, with a surviving parent, receives a survivor annuity of $600 per year, or $50 per month; an only child survivor without a surviving parent receives an annuity amounting to $720 per year, or $60 per month. Paragraph (3) of subsection (k) will increase these only child annuities to $996 per year ($83 per month) and $1,200 per year ($100 per month), respectively. The child survivor annuities provided in the bill are similar to those provided under civil service and District teacher retirement legislation and reflect the 5.6 percent cost-of-living increase granted in August 1970 to civil service and teacher survivor annuitants.

d. *Increased annuities for survivors on current rolls.*—Paragraph (4) of subsection (k) will increase the annuities of adult survivors on the survivor annuity rolls on the effective date provided by the bill to the greater amount of $3,144 per year ($262 per month) or 35 percent of the basis upon which their annuities were computed. The new minimum of $262 per month also reflects the 5.6 percent cost-of-living increase granted in August 1970 to survivor annuitants under the civil service and District teacher retirement systems. The committee believes that this represents a vitally needed increase over the grossly inadequate minimum annuity of $150 per month now being received by 322 or 36 percent of the 885 adults currently on the survivor rolls.

Paragraph (4) additionally provides that child survivors on the rolls on the bill's effective date shall be entitled to the higher annuities as set forth in paragraph (3) of

the subsection. Thus, for example, an only child with a surviving parent, who now is receiving $50 per month, will receive $83 per month.

e. *Revision of provisions regarding adult survivors who remarry and child survivors who are students.*—Paragraph (5) of subsection (k) provides for the restoration of annuity payments to widows or widowers whose annuities were terminated upon their remarriage before age 60, when such remarriage is later terminated by death, annulment, or divorce. It also will permit a widow or widower over 60 years of age to continue to receive an annuity after remarriage. Additionally, paragraph (5) will enable a student-child to receive an annuity as long as he remains an unmarried student, up to age 22. These provisions are consistent with those of the retirement systems applicable to civil service employees and District teachers.

f. *Revision of provisions regarding reduced annuities.*—Present law permits a member to elect, at the time of his retirement, to receive a reduced annuity in lieu of a full annuity in order to provide an increased annuity to a designated survivor after the retired annuitant's death. However, should the retired annuitant survive the person so designated, he is not, under present law, entitled to full annuity payments. Paragraph (6) of subsection (k) will allow the full annuity to be paid under such circumstances.

g. *Provision of automatic survivor annuity adjustments.*—Paragraph (7) of subsection (k) provides for automatic adjustments in survivor annuities based on cost-of-living increases. Survivor annuities are adjusted in the same manner under the civil service and District retirement systems.

II. Section 2

Section 2 of the bill authorizes the legislation to take effect on the first day of the first pay period which begins on or after date of enactment.

III. Section 3

Section 3 cites the legislation as the "Policemen and Firemen's Retirement and Disability Act Amendments of 1970".

HEARINGS

A public hearing on this legislation was held on February 26, 1970, before the Subcommittee on Fiscal Affairs of the Senate District of Columbia Committee. Testimony was presented by spokesmen for the Commissioner of the District of Columbia, the District of Columbia Fire Fighters Association, the Policemen's Association of the District of Columbia and the National Association of Retired Civil Employees.

S. 2695 as introduced was a bill supported by the Fire Fighters Association and the Policemen's Association. At the hearings on this bill the District of Columbia government presented its own proposals.

S. 2695 as amended and reported by the committee is a compromise between the two basic proposals made to the committee in which the District government's recommendations are included in all aspects except for the provisions dealing with adult survivor benefits which are set at a level above that originally suggested by the District government and below that requested by the associations.

All of the parties concerned concur in the provisions of S. 2695 as amended by the committee.

Cost of the legislation

The committee is advised that the first year cost of the benefits provided in S. 2695 is estimated at $1,030,200. As previously indicated, the additional income to the District of Columbia which will result from the increase in members' salary deduction from 6½ to 7 percent will amount to $319,000. Thus, the net cost to the District for the first year will be $711,200.

The committee has been informed by the District of Columbia government that this cost will be partially funded through absorption and within the availability of resources in its fiscal year 1971 financial plan.

The following table shows the estimated annual cost of this proposed legislation for each of the first, second, third, and 10th years, as well as the ultimate cost, based on current police and fire salary levels:

TABLE 1.—ESTIMATED COST OF BENEFITS UNDER S. 2695 BASED ON CURRENT POLICE AND FIRE SALARY LEVELS

[In thousands of dollars]

	1st year	2d year	3d year	10th year	Ultimate
Dropping of term "dependent widower"	1.1	3.4	5.6	10.2	22.6
Removal of ½ support requirement for children	12.4	12.4	12.4	12.4	12.4
Student-child provision	20.6	20.6	20.6	20.6	20.6
Next of kin benefit after retirement		17.8	17.8	17.8	17.8
(2) 2½ percent for disability not in line of duty (⅔ minimum—70 percent maximum)	1.9	5.8	9.6	36.5	82.5
(3) Optional retirement—no age requirement—2½ to 80 percent maximum	5.8	17.4	28.9	109.6	243.0
Disability recovery cut-off (age 50)	(1)	(1)	(1)	(1)	(1)
$50,000 lump sum payment to dependents of policeman or fireman killed in performance of duty	150.0	150.0	150.0	150.0	150.0
Adult survivor annuity	11.7	35.1	58.5	222.3	493.1
Minimum benefit for surviving children (with and without living parent	2.7	8.1	13.4	44.2	44.2
Application of (k)(2) and (k)(3) to current rolls	647.1	625.4	602.4	373.0	0
Continuation of survivor annuities after 60 and restoration before 60	8.7	26.3	43.9	166.9	351.0
Total	862.0	922.3	963.1	1,16 2	437.2

1 No significant cost.

Note: Adjustment of survivor annuities based on cost-of-living increases: Increase of $92 per year for each 4-percent increase n cost of living plus $23 per year for the additional 1-percent increase.

1st year net cost:	
Gross	$862.0
5.6-percent increase in survivor annuity	168.2
Less increased salary deduction	−319.0
Net	711.2

Source: Office of Government Actuary U.S. Treasury Department.

SUPPLEMENTAL TO THE ACT INCORPORATING THE GEORGE WASHINGTON UNIVERSITY

The bill (H.R. 17146) supplemental to the act of February 9, 1821, incorporating the Columbian College now known as the George Washington University, in the District of Columbia and the acts amendatory or supplemental thereof was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1298), 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. 17146, as amended and reported by your committee, is to amend the charter of the George Washington University in order to confer upon the university the powers contained in section 5 of the District of Columbia Non-Profit Corporation Act, and to exempt the university from the operation of the local usury laws.

BACKGROUND

The George Washington University was incorporated by Act of Congress in 1821. Since that time, this charter has been amended by supplemental legislation passed by the Congress on seven occasions . . . in 1871, 1873, 1878, 1893, 1898, 1904, and 1905. Starting in 1821 as Columbian College, with about 30 students, the University now has approximately 5,500 undergraduate students, 6,700 students in its various graduate schools, and some 2,700 unclassified part-time students.

PROVISIONS OF THE BILL

1. Powers conferred by section 5 of the D.C. Non-Profit Corporation Act

In the course of administering its affairs, it is necessary for The George Washington University, from time to time, to exercise powers similar to those exercised by other corporate entities. For instance, it acquires and holds title to land, invests endowment funds, borrows money from banking institutions, mortgages real estate, employs approximately 400 members of its faculty and 6,000 administrative and maintenance personnel, and engages in bond issues for educational purposes.

While its present charter, as amended, generally empowers the University to "do and transact all and every business concerning or touching the premises" and to "manage all the estate and property now belonging to said college," it has become the practice in recent times, with respect to both profit and nonprofit corporations, to grant certain express powers which enable such corporations more easily to carry on their day-to-day functions.

The administration and operation of The George Washington University will be facilitated at this time by the provision in H.R. 17146 which will grant to the University all those powers conferred upon non-profit corporations incorporated under the laws of the District of Columbia by Section 29–1005 of the D.C. Code. These are the broad powers customarily given non-profit corporations in all jurisdictions. For example, in the matter of the power to execute security instruments, whereas the University's charter contains only some very general and archaic language relative to managing the affairs of the University, section 5 of the D.C. Non-Profit Corporation Act includes very specific boilerplate powers. Thus, this provision in H.R. 17146 will be of benefit to the University by spelling out specific, standard powers which are not adequately treated in the language of its charter.

2. Exemption from D.C. usury laws

Under existing law, whereas profit-making corporations do not come under the purview of the District of Columbia usuary laws, nonprofit corporations in the District are so restricted. Thus, The George Washington University and other non-profit corporations located in the District of Columbia are not permitted to pay interest on loans at rates in excess of the 8 percent maximum which, except for certain statutory exemptions, is the legal rate for borrowing in the District of Columbia at the present time. It is a well-known fact, however, that for a substantial

period of time the prime rate of interest for borrowing has been in excess of this figure. As a result, the University now finds itself seriously inhibited in its ability to borrow money, both on an open line of credit and upon security of land and improvements.

This situation poses a very serious problem to the University at this time, as they have planned to begin construction this summer on several badly-needed new facilities, one of which is a new medical school and medical school library. The Federal Government has granted to the University some $15 million toward the total $25 million cost of these projects. Before the University can actually obtain these grants, however, it must first have expended that amount of money on the projects. That is, under the interest subsidy program the institution must secure a private loan, and the Federal Government contributes toward the debt service thereon through an annual grant.

Hence, in order to qualify the University first must obtain a short-term construction loan, the interest rate on which currently runs anywhere from 10.5 percent to 12 percent, if indeed the University is fortunate enough to find a lender.

It will not be necessary for the University to obtain a permanent loan on this medical building project, because with the government grant and the funds they have solicited in the form of contributions and gifts, they will have sufficient funds without such a loan. The short-term loan, however, is imperative in order that the University may qualify for the Federal grant.

The objective of this planned new facility is to enable the University to increase the number of entering medical students from 110 to 150 per year, and thus to increase its output of physicians in response to the critical shortage which exists in the city today.

In addition, the University is presently negotiating with a major insurance company for a mortgage loan of some $5 million, which together with a Federal grant and loan already assured will enable them to build a badly-needed new library building. However, such a loan simply cannot be obtained at the present legal rate of interest in the District of Columbia. It is likely that this loan will be obtained at an interest rate of approximately 10.5 percent.

Actually, this undertaking has been delayed somewhat because for some time the University was unable to secure two city lots which were necessary to consolidate the site for the building. As an alternative solution the University has now selected a new site, and has a commitment to HEW to begin the construction of this new building before the end of this year. Otherwise, they face the possibility of the loss of the Federal funding of the project.

The need for this new library facility is critical because if the University does not proceed with its construction it will be faced with the loss of its accreditation by the Middle States Association.

In addition, the bill contains language which will assure that the University cannot bring action charging any lender of funds to the University with exceeding the legal rate of interest provided in the District of Columbia usury statutes.

This language is identical to an amendment which was added to the D.C. Business Corporation Act in 1963 (77 Stat. 136; D.C. Code, sec. 29-904(h)), and simply provides added protection to lending institutions which makes loans to organizations which are exempted from the application of the usury laws.

CONCLUSION

The Committee feels that the provisions contained in this bill are necessary to the continued operation of George Washington University.

PENSIONS FOR WIDOWS OF RETIRED DISTRICT OF COLUMBIA POLICEMEN AND FIREMEN

The Senate proceeded to consider the bill (H.R. 4183) to provide that the widow of a retired officer or member of the Metropolitan Police Department or the Fire Department of the District of Columbia who married such officer or member after his retirement may qualify for survivor benefits which had been reported from the Committee on the District of Columbia with an amendment on page 2, line 13, after the word "after", strike out "July 1, 1969" and insert "January 1, 1971."

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.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-1299), 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. 4183 is to provide that the widow of a retired officer or member of the Metropolitan Police Department or the Fire Department of the District of Columbia who married such an officer or member after his retirement may qualify for survivor benefits under the Policemen's and Firemen's Retirement and Disability Act.

PROVISIONS OF THE BILL

Under existing law, if a retired officer or member of the Metropolitan Police Department or the Fire Department of the District of Columbia marries subsequent to his retirement, upon his death his widow is not entitled to any pension whatever. To correct this situation H.R. 4183 provides that in the event a retired officer or member marries after his retirement his widow will be entitled to the same full benefits as provided in subsection (a)(3) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-521 (3)) to which she would be entitled had she married the officer or member during his active service. It is specified, however, that in order to qualify for such pension the widow must have been married to such officer or member for at least 2 years prior to his death, or that she be the mother of issue by the marriage.

DISTRICT OF COLUMBIA ENTRANCE INTO THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

The bill (S. 3944) to authorize the District of Columbia to enter into the Interstate Agreement on Qualification of Educational Personnel was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3944

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia an agreement with any State or States legally joining therein in the form substantially as follows:

"THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

"ARTICLE I—Purpose, Findings, and Policy

"1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

"2. The party States find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Agreement can increase the availability of educational manpower.

"ARTICLE II—Definitions

"As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

"1. 'Educational personnel' means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

"2. 'Designated State official' means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

"3. 'Accept', or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

"4. 'State' means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

"5. 'Originating State' means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

"6. 'Receiving State' means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

"ARTICLE III—Interstate Educational Personnel Contracts

"1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated state officials enter into it, and the

subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated state official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own State.

"2. Any such contract shall provide for:

"(a) Its duration.

"(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

"(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

"(d) Any other necessary matters.

"3. No contract made pursuant to this Agreement shall be for a term longer than five years by any such contract may be renewed for like or lesser periods.

"4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating State approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any persons qualified because of successful completion of a program prior to January 1, 1954.

"5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or othewise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

"6. A contract committee composed of the designated State officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

"ARTICLE IV—Approved and Accepted Programs

"1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

"2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

"ARTICLE V—Interstate Cooperation

"The party State agrees that:

"1. They will, so far as practicable, prefer the making of multi-lateral contracts pursuant to Article III of this Agreement.

"2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

"ARTICLE VI—Agreement Evaluation

"The designated State officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

"ARTICLE VII—Other Arrangements

"Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

"ARTICLE VIII—Effect and Withdrawal

"1. This Agreement shall become effective when enacted into law by two States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

"2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

"3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

"ARTICLE IX—Construction and Severability

"This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters."

SEC. 2. The "designated State official" for the District of Columbia shall be the Superintendent of Schools of the District of Columbia. The Superintendent shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the Board of Education of the District of Columbia.

SEC. 3. True copies of all contracts made on behalf of the District of Columbia pursuant to the Agreement shall be kept on file in the office of the Board of Education of the District of Columbia and in the office of the Commissioner of the District of Columbia. The Superintendent of Schools shall publish all such contracts in convenient form.

SEC. 4. As used in the Interstate Agreement on Qualification of Educational Personnel, the term "Governor" when used with reference to the District of Columbia shall mean the Commissioner of the District of Columbia.

DISTRICT OF COLUMBIA WELFARE ACT OF 1970

The Senate proceeded to consider the bill (S. 3010) to authorize the District of Columbia a program of public day-care services; and to amend the District of Columbia Public Assistance Act of 1962 so as to relieve certain adult children of the requirement of support and to provide public assistance in the form of foster home care to certain dependent children which had been reported from the Committee on the District of Columbia with amendments on page 1, line 4, after the word "of", strike out "1969" and insert "1970."; after line 4, strike out: "TITLE I—DAY CARE SERVICES"

At the beginning of line 6, change the section number from "101" to "2"; on page 2, line 5, after the word "section", strike out "103 of this title," and insert "4 of this Act,"; at the beginning of line 23, change the section number from "102" to "3"; in line 25, after the word "section", strike out "101" and insert "2"; on page 3, line 2, after the word "of", where it appears the first time, strike out "Public Welfare, the Department of Public Health, the Board of Education, the Recreation Board," and insert "Human Resources, the Board of Education, the Department of Recreation,"; in line 22, after the word "this", strike out "title" and insert "Act"; at the beginning of line 23, change the section number from "103" to "4"; at the beginning of line 24, strike out "title" and insert "Act"; and on page 4, after line 2, strike out:

TITLE II—AMENDMENTS TO THE DISTRICT OF COLUMBIA PUBLIC ASSISTANCE ACT OF 1962

SEC. 201. Section 19(a) of the District of Columbia Public Assistance Act of 1962 (76 Stat. 918; D.C. Code, sec. 3-218(a)) is amended by striking the period at the end of such subsection and inserting in lieu thereof a colon and the following: *"Provided,* That no adult child shall be responsible for the support of a parent who for a period of at least ten years in the aggregate during such child's minority willfully neglected or refused without just cause to provide for the support and maintenance of the child."

SEC. 202. The District of Columbia Public Assistance Act of 1962 is amended by inserting immediately after section 22 the following new section 22A:

"SEC. 22A. In administering the provisions of this Act relating to aid to dependent children, the Commissioner shall provide public assistance in the form of foster home care to dependent children who are described in subsection (a) of section 408 of the Social Security Act and who are considered to be dependent children under this Act. In providing public assistance to such children, the Commissioner shall meet all the requirements contained in such section 408, as a condition to Federal payments under title IV of such Act on account of expenditures with respect to such children; except that the Commissioner shall not deny such assistance to any child otherwise eligible therefor because of the failure or refusal of the unemployed parent of such child to seek or accept employment or to participate in any program of vocational education, training, or rehabilitation."

So as to make the bill read:

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 "District of Columbia Welfare Act of 1970."

SEC. 2. In order to provide adequately for the care and protection of children whose parents are, for part of the day, working or seeking work, enrolled under a work incentive program, or otherwise absent from the home, or unable for other reasons to provide parental supervision, the District of Columbia Council is authorized, within the availability of appropriated funds, and subject to the provisions of section 4 of this Act, to prescribe such regulations as may be necessary to establish a program providing for public-day-care services in the District of Columbia, including the provision of day care in facilities (including private homes) which are licensed by the District of Columbia. Such regulations shall provide—

(1) for the establishment of standards of eligibilty that will authorize the providing of day care only in cases in which it is found

that a need for such care exists, and that provision by the District of Columbia of public-day-care services is in the best interests of the child, its mother, and the District;

(2) for the establishment of standards requiring operation of the program by personnel professionally trained in the fields of welfare, education, and health; and

(3) for the establishment of a schedule of fees to be charged parents for day-care services.

SEC. 3. The Commissioner of the District of Columbia shall administer and enforce the regulations issued by the Council under section 2 and may provide—

(1) for cooperative arrangements between the Department of Human Resources, the Board of Education, the Department of Recreation, and the National Capital Housing Authority to assure their maximum utilization in the provision of necessary services for children receiving day care and in the setting of standards for day-care agencies;

(2) for the purchase of day care from private organizations or individuals which are licensed by the District of Columbia and which are operating under standards approved by the Council;

(3) for the payment by the parent of that portion of the fee for day-care services established by the Council which the Commissioner determines that such parent is able to pay;

(4) that priority be given to members of low-income groups and in particular to such members who are in work-training programs; and

(5) for such other action as may be necessary to carry out the provisions of this Act.

SEC. 4. In establishing any plan pursuant to this Act, the Commissioner of the District of Columbia shall do so with a view to having such plan qualify for Federal funds under section 422 of the Social Security Act.

The amendments were agreed to.

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

The title was amended so as to read: "An act to authorize in the District of Columbia a program of public-day-care services."

REQUIREMENT CHANGE OF CONSENT TO ADOPTION OF A PERSON UNDER 21 YEARS OF AGE

The bill (H.R. 13307) to amend chapter 3 of title 16 of the District of Columbia Code to change the requirement of consent to the adoption of a person under 21 years of age, was considered, ordered to a third reading, read the third time, and passed.

AMENDMENT OF THE DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL ACT

The Senate proceeded to consider the bill (H.R. 9017) to amend the District of Columbia Alcoholic Beverage Control Act which had been reported from the Committee on the District of Columbia with an amendment, on page 2, line 6, after the word "Board.", insert "A restaurant operating on the premises of a theater, symphony hall, opera house, or other facility which has as its principal purpose the presentation of live drama, music, opera, or other performing arts, may sell and serve alcoholic beverages to seated or standing persons at locations within the facility approved by the Board."

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.

AMENDMENT OF THE DISTRICT OF COLUMBIA PUBLIC ASSISTANCE ACT OF 1962

The Senate proceeded to consider the bill (H.R. 670) to amend section 19(a) of the District of Columbia Public Assistance Act of 1962, which had been reported from the Committee on the District of Columbia with an amendment, to strike out all after the enacting clause and insert:

That section 19 of the District of Columbia Public Assistance Act of 1962 (76 Stat. 917; D.C. Code, sec. 3–218) is amended to read as follows:

"SEC. 19. (a) Responsible relatives for any applicant or recipient of public assistance shall be limited to spouse for spouse and parent for a child under the age of twenty-one, and their financial responsibility shall be based upon their ability to pay. Any such applicant or recipient of public assistance or person in need thereof, or the Commissioner of the District of Columbia, may bring an action to require such financially responsible spouse or parent to provide such support, and the court shall have the power to make orders requiring such spouse or parent to pay such eligible applicant or recipient of public assistance such sum or sums of money in such installments as the court in its discretion may direct, and such orders may be enforced in the same manner as orders for alimony.

"(b) The Commissioner is authorized on behalf of the District to sue such spouse or parent for the amount of public assistance granted to such recipient under this Act or under any Act repealed by this Act, or for so much thereof as such spouse or parent is reasonably able to pay.

"(c) All suits, actions, and court proceedings under this section shall be brought in the Domestic Relations Branch of the District of Columbia Court of General Sessions, or in that court division which may subsequently exercise the jurisdiction exercised by the Domestic Relations Branch on the effective date of this Act. To the extent applicable, suits, actions, and proceedings brought pursuant to this section shall be governed by the provisions of the Act approved April 11, 1956 (70 Stat. 111), as such Act may from time to time be amended or superseded."

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 amend section 19 of the District of Columbia Public Assistance Act of 1962."

TO FACILITATE AND ENCOURAGE EMPLOYMENT OF MINORS IN THE DISTRICT OF COLUMBIA DURING THE SUMMER

The Senate proceeded to consider the bill (H.R. 12671) to amend the act of May 29, 1928, to facilitate and encourage the employment of minors in the District of Columbia between the ages of 14 and 16 during the summer and other school vacation periods, and for other purposes which had been reported from the Committee on the District of Columbia with an amendment, to strike out all after the enacting clause and insert:

That the first sentence of section 2 of the Act entitled "An Act to regulate the employment of minors within the District of Columbia", approved May 29, 1928 (D.C. Code, sec. 36–202), is amended by inserting immediately before the last comma thereof a comma and the following: "except during the summer (June 1 through Labor Day) when the evening hour shall be nine o'clock".

SEC. 2. Section 9 of the Act entitled "An Act to regulate the employment of minors within the District of Columbia", approved May 29, 1928 (D.C. Code, sec. 36–209), is amended by deleting "together with the physician's certificate of physical fitness, the school record, and the employer's statement of intention to employ the child." and inserting in lieu thereof the following: "together with the physician's certificate of physical fitness and the school record, if such certificate or record is required by this Act, and the employer's statement of intention to employ the child, and in the case of a vacation permit involving a minor under the age of sixteen years, any certification filed pursuant to section 12(2)(B) of this Act in lieu of a certificate of physical fitness."

SEC. 3. Section 10 of the Act entitled "An Act to regulate the employment of minors within the District of Columbia", approved May 29, 1928 (D.C. Code, sec. 36–210), is amended by deleting "or vacation".

SEC. 4. Section 12 of the Act entitled "An Act to regulate the employment of minors within the District of Columbia", approved May 29, 1928 (D.C. Code, sec. 36–212), is amended to read as follows:

"SEC. 12. The director of the department of school attendance and work permits, or any person duly authorized by him, shall have authority to issue a vacation permit to a minor between the age of fourteen and eighteen years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, upon the application in person of the minor desiring employment, and if—

"(1) the age of such minor has been proved according to section 11 of this Act; except that the director may, if the minor does not have with him at the time of application for such permit any or all of the required documentary evidence of age, verify the age of such minor by reference to his school or other appropriate records;

"(2) the application of such minor, if he is under the age of sixteen years, is accompanied by (A) the written consent of the parent, guardian, or custodian of the minor to his employment, and (B) a written certification of such parent, guardian, or custodian that the minor is physically fit; and

"(3) the statement relating to the employment of a minor required by paragraph (a) of section 10 of this Act is filed with his application.

Notwithstanding the foregoing provisions of this section, the director, with respect to any minor under the age of sixteen years, may require such minor to file the certificate of physical fitness required by paragraph (c) of section 10 of this Act. A permit issued under this section with respect to any minor under the age of sixteen years may be canceled, if the director thereafter determines such minor to be physically unqualified for the employment in which he is engaged. Such permits issued under this section shall be different in color from the work permit allowing employment while school is in session and shall state the periods during which its use is valid.".

SEC. 5. The last sentence in section 13 of the Act entitled "An Act to regulate the employment of minors within the District of Columbia", approved May 29, 1928 (D.C. Code, sec. 36–213), is amended by inserting immediately after "promise of employment and" a comma and the following: "except to the extent otherwise provided in section 12 of this Act.".

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 amend the act of May 29, 1928, to facilitate and encourage the employment of minors in the District of Columbia between the ages of 14 and 18 during the summer and other school vacation periods, and for other purposes.".

DISPOSITION OF CERTAIN PROPERTY OWNED BY THE DISTRICT OF COLUMBIA IN PRINCE WILLIAM COUNTY, VA.

The Senate proceeded to consider the bill (H.R. 18086) to authorize the Commissioner of the District of Columbia to sell or exchange certain real property owned by the District in Prince William County, Va., which had been reported from the Committee on the District of Columbia with amendments, on page 2, line 16, after the word "swamp," strike out "or bog." and insert "bog, pothole, swale, glade, slash, overflow land of river flats, pool, slough, hole, as well as those areas necessary to protect the natural features of a contiguous wetland area. The area encompassed by the definition of wetlands is to be determined jointly by the Commissioner and the Secretary of the Interior."; on page 3, line 4, after the word "Beginning", strike out "one year" and insert "three years"; and in line 10, after the word "within", strike out "one year" and insert "three years".

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. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1306), explaining the purposes of the measure.

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

PROVISIONS OF THE BILL

The bill, as amended, authorizes the District to take certain action in regard to the Featherstone Tract which is approximately 350 acres of land owned by it in Prince William County, Virginia.

The bill gives the District the authority to:

(a) Convey to Prince William County approximately 37 acres of the Featherstone Tract, in consideration, among other considerations of the issuance of a permit to establish and operate a sanitary landfill in the County at Cockpit Point.

(b) Authorize the Commissioner to transfer to the Secretary of the Interior jurisdiction over the balance of the tract, including the "wetlands," in exchange for money or for land equivalent in area or value.

(c) Authorize the Commissioner, beginning three years after the effective date of the proposed legislation, to sell or exchange so much of the area as has not been transferred to the Secretary within three years after such effective date, but not including the "wetlands." The "wetlands" may not be disposed of except to the Interior Department.

PURPOSE OF THE BILL

The purpose of H.R. 18086, as amended, is to allow the District of Columbia to enter into an agreement under which the District in consideration of transferring a portion of the Featherstone Tract to Prince William County, would be issued a permit or permits by the County authorities for the operation of a sanitary landfill in that part of the County known as "Cockpit Point." The balance of the Featherstone Tract would first be made available to the Secretary of the Interior for such compensation as may be agreed upon or in exchange for land under his jurisdiction which would be of use to the District.

Should the Secretary, within three years (as amended by the Committee) from the effective date of the bill, not accept the transfer to him of all or any part of the balance of the Featherstone Tract, the Commissioner would be authorized to sell or exchange so much of the property, not including the "wetlands," as shall not have been transferred to Prince William County or the Department of the Interior.

As a result of this agreement.

(a) The District will be able to operate at Cockpit Point a large sanitary landfill which is estimated to be capable of meeting the Districts trash disposal needs for thirty years.

(b) Prince William County will be able to build on the portion of the Featherstone Tract transferred to it a water pollution control plant capable of meeting the County needs.

(c) The "wetlands" will be preserved in their natural state under the control of the Department of Interior.

(d) The Department of the Interior will have the opportunity to acquire, in addition to the "wetlands", that portion of the Featherstone Tract not conveyed to Prince William County.

HISTORY OF THE PROPOSAL

Approximately 50 years ago the District of Columbia acquired two tracts of land in Prince William County, Virginia, for future use in disposing of refuse materials from the city of Washington. A 455-acre tract of Cherry Hill was acquired in 1922. Operation of a reduction plant, located at Cherry Hill, was discontinued in 1947 and was thereafter dismantled. The land at Cherry Hill was sold by the District of Columbia in 1962. The District of Columbia Government continued to plan for the ultimate use of the Featherstone Point site as a major disposal area by utilization of modern landfill methods.

By 1965 it became apparent to District of Columbia officials that within a short-range future the District of Columbia would face a critical problem for garbage and trash disposal. Not only was the Kenilworth dump a major contributor to air pollution in the District, but the future life and utility of the Kenilworth dump was very limited. Plans were launched for a new, modern incinerator facility, and steps were taken to supplement the limited capacity of such incinerator by establishing a major landfill operation at some point in the metropolitan area.

Concurrently, Prince William County, Virginia, found itself with a developing sewage disposal problem resulting from the rather rapid growth of certain communities within the county. The county officials proposed to the District of Columbia Government the purchase of 25 acres of the District of Columbia's Featherstone Point for the location of a large filtration plant needed for the present and future development of the county and such communities as Occoquan, Woodbridge, and the Garfield area.

Legislation was introduced in the 90th Congress which would have authorized the Commissioner of the District of Columbia to sell the acreage desired by Prince William County and to arrange for the disposition of the balance of the acreage but reserving landfill operation rights for 167 acres which was essentially marsh land.

The legislation was favorably reported to the House, but substantial objections were raised to the bill by conservation groups who feared that the dikeing and landfill operations would adversely affect the wildlife ecology of the wetland portion of the site. The legislation did not reach a final vote in the House of Representatives.

THE PRESENT PROPOSAL

Early in the present Congress, H.R. 664 was introduced proposing action similar to that in H.R. 18980 of the 90th Congress.

Hearings before the House District of Columbia Committee were held and thereafter a number of meetings and discussions were held with District of Columbia and Prince William County officials. It was suggested that the District and the county officials join in an effort to find a solution to their mutual problems, which would avoid any possible pollution in the area and which would not require utilization of any marsh or wetland areas for sanitary landfill operations.

Under date of April 17, 1970, the District of Columbia Government transmitted to the Chairman of Subcommittee No. 4 of the House District of Columbia Committee a communication in reference to this problem explaining a modified and hopefully an acceptable alternative to the previous plans. The draft bill submitted with this letter became the text of H.R. 18068 as introduced in the House with a single modification.

H.R. 18068 was passed by the House of Representatives and came before the Subcommittee on Public Health, Education, Welfare and Safety of the Senate District of Columbia Committee for hearings on Friday, August 28, 1970. Representatives of the District of Columbia Government, Prince William County, and various conservation groups testified before the subcommittee at that time.

This testimony raised several questions about the bill which the committee has tried to answer in a manner satisfactory to all of the parties concerned.

COMMITTEE AMENDMENTS

Three amendments have been made by the Committee.

(1) The definition of "wetlands" has been expanded in an attempt to make it more precise.

While any word definition of "wetlands" is unsatisfactory as compared to the actual drawing of the boundaries of the area in question the Committee has attempted to make as clear as possible what is meant by "wetlands" by expanding the definition included in the bill.

The definition of "wetlands" in H.R. 18086 as originally came before the Committee read: "'wetlands,' by which term is meant those lowlying portions of the property in the nature of a marsh, swamp or bog."

The Committee has changed this definition to read: "'wetlands,' by which term is meant those low-lying portions of the property in the nature of a marsh swamp, bog, pothole, swale, glade, slash, overflow land of river flats, pool, slough, hole, as well as those areas necessary to protect the natural features of a contiguous wetland area."

(2) The area encompassed by the definition of "wetlands" is to be determined jointly by the Commissioner of the District of Columbia and the Secretary of the Interior.

In addition to an expanded definition of "wetlands" the Committee felt that requiring that the actual boundaries of the "wetlands" at the Featherstone Tract be determined jointly and agreed on by both the

Commissioner of the District of Columbia and the Secretary of the Interior would help insure that the ultimate boundaries of the "wetlands" area would be satisfactory to all concerned.

(3) The period of one year during which the District is prohibited from transferring the remainder of the Featherstone Tract to parties other than the Department of the Interior is extended to three years.

The Committee has been convinced that the one year period provided in the bill would not afford adequate time for the Department of Interior to complete the acquisition of what remains of the Featherstone Tract and therefore has amended the bill to extend this time to three years.

RELIEF OF CERTAIN EMPLOYEES IN THE DEPARTMENT OF DEFENSE

The bill (S. 3940) for the relief of certain employees of the Department of Defense, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3940

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) each of the following-named persons is relieved of liability to the United States in the amount which appears beside his name:

Sarah L. Botsai	$100.00
Ouida Bankston	100.00
William Hood	1,052.98
James Child	269.93
Ronald Roth	564.46
Dexter Brown	146.50
Susan Groswith	100.00
Mary Kubal	100.00
Michael Madore	238.75
Diana Hensley	200.00
Robert Tarr	254.25
John Mollick	398.56
Howard Sargent	563.06
Allen P. Alsop	591.76
John Rowland	600.56
Carolyn Dischert	100.00
Alan Koseff	373.18
Thomas Orr	461.10
Samuel Raskin	384.50

Such amounts represent overpayments of travel, transportation, and other related expenses made, as a result of an administrative error, to the above named civilian employees of the Department of Defense during the years 1966, 1967, and 1968. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts for which liability is relieved by this section.

(b) The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to each person named in the first section of this Act an amount equal to the aggregate of the amounts paid by him, or withheld from sums otherwise due him, with respect to his indebtedness to the United States specified in such section.

SEC. 2. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the following individuals, the sums listed after their names in full settlement of all their claims against the United States for reimbursement of certain travel expenses incurred in connection with travel pursuant to travel orders issued in 1966, 1967, and 1968:

James Child	$247.00
Carolyn Dischert	190.97
Alan Koseff	543.20
Thomas Orr	382.00
Samuel Raskin	492.00
James R. Duncan	342.58
Robert E. Eckert	412.63

SEC. 3. No part of the amount appropriated in subsection (b) of the first section of this Act or in section 2 of this Act, for the payment of any one claim in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1307), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to relieve the named individuals of their liability to the United States resulting from overpayments of travel, transportation, and other related expenses, and would authorize refunds to these individuals of amounts already collected. Section 2 would authorize additional payments to certain employees for the unreimbursed expenses they incurred in connection with their official travel pursuant to Government orders.

STATEMENT

The Department of Defense recommends that S. 3940 be favorably considered.

The facts of the case as contained in the Department of Defense report on August 4, 1970, are as follows:

The Congress has not yet enacted permanent authority for Government agencies to investigate and settle claims arising out of overpayments of allowances, comparable to the authority in the pay area provided by Public Law 90–616. In the absence of an administrative remedy, private relief legislation remains the only vehicle outside of litigation to deal with such claims. While such legislation in general may be regarded as conferring benefits on a limited number of people, the Department supports S. 3940 since its purpose is to reimburse employees for actual and necessary expenses incurred and authorized pursuant to Government travel orders.

The employees named in S. 3940 were assigned for language and area studies training to the U.S. Foreign Service Institute, Taiwan, to the University of Durham, England, and to the U.S. Army Institute for Advanced Russian and East European Studies, Germany, in 1966, 1967, and 1968. These employees were authorized by their orders to be paid, and were in fact paid, the same travel allowances as employees who are ordered to these overseas stations for regular duty. These payments for dependents' per diem, miscellaneous expenses, and temporary quarters subsistence were received and spent in good faith by the employees to defray the costs of their moves to and from these locations. This practice was eventually brought to the attention of the Department of Defense Per Diem, Travel and Transportation Allowance Committee and the Comptroller General by a Department of Defense finance officer. In his decision of July 23, 1969, B–167229, the Comptroller General directed that these payments be stopped and that similar amounts already paid be collected from the employees. The Department instituted collection procedures to recover the past payments. However, with the introduction of S. 3940, the Comptroller General authorized the suspension of collections for the remainder of the second session of the 91st Congress.

The situation described above results from the fact that title 5 of the United States Code, and the implementing OMB Circular A–56, currently provide two different sets of travel allowances, depending upon whether an employee is ordered to a station for training duty or regular duty. Those ordered to training assignments receive only their travel and per diem, except that the transportation of an employee's immediate family and household goods is authorized when the cost of such transportation is estimated to be less than the total per diem payments that the employee would receive while at the site of the training assignment (5 U.S.C. 4109). However, if the purpose of the travel is to assume a new regular duty assignment outside the continental United States, the employee is entitled to the following allowances in addition to those just mentioned:

(1) Payment of per diem to the employee's immediate family while en route between stations.

(2) Payment of subsistence expenses while occupying temporary quarters upon the return to a new duty station in the United States.

(3) Reimbursement of miscellaneous expenses associated with discontinuing and establishing residences (5 U.S.C. ch. 57).

These three allowances, and others applicable only to movements within the continental United States, were authorized for regular duty transferees by Public Law 89–516 in 1966. The Comptroller General's decision held that the benefits of the 1966 legislation do not extend to employees ordered to training assignments whose travel allowances are fixed by a different provision of law (5 U.S.C. 4109) which remain unchanged.

The Department of Defense recognizes that these employees do not have a legal right to be relieved of their liability, or to be paid the additional amounts authorized in section 2 of the bill. However, private relief legislation of this nature may be premised on considerations of equity and fairness. The Department issued travel orders to the employees which contained erroneous information that certain expenses not authorized by law would be paid by the Government, and the employees relied on the apparent obligation of the Government to pay allowances stated in their travel orders in performing their training assignments. Finally, these amounts would not be an unearned windfall since they represent the reimbursement of expenses incurred in good faith by the employees to defray the costs of their transfers to and from the United States.

The persons named in section 2 and those identified in the following paragraph traveled to these locations for training under orders providing for the allowances later held to be unauthorized. We have determined that they were precluded from filing vouchers for reimbursement of these authorized expenses as a result of the referenced Comptroller General decision. Since they are part of the class of persons affected by that decision, it is felt that they should now be entitled to submit new vouchers and to be paid for the allowances originally authorized by their orders.

For the reasons indicated above, the Department of Defense recommends that S. 3940 be favorably considered.

Enactment of this legislation, amended as suggested, will cause no apparent increase of the budgetary requirements of the Department of Defense.

In agreement with the views of the Department of Defense the committee recommends the bill favorably.

COMMITTEE MEETING DURING SENATE SESSION—OBJECTION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate today.

Mr. JAVITS. Mr. President, reserving the right to object—and I shall object—I wonder whether the distinguished acting majority leader would yield to me for a statement.

Mr. BYRD of West Virginia. I am glad to yield to the Senator from New York for that purpose.

Mr. JAVITS. Mr. President, this question arose on Friday, during my absence. I was in New York serving as a delegate to the United Nations this year.

I believe—I have not been able to search the history in the short time available—that this is the first time in my career in the Senate or in the House of Representatives—which I say now spans over 20 years—that I have ever objected to a committee session.

I did not object to the sessions generally. I have never done that. I hope that I never will. I hope that I will never have to object to another committee request. I shall not object after today, I say in deference to the chairman and to the members of the Finance Committee. But I really felt there was a very serious issue at stake. It is not proper that on rather precipitous notice 2 days of hearings be held, in order that so portentous a piece of legislation affecting the foreign policy and the economic policy of the United States should be rushed through a committee with only the pretense of hearings and without adequately considering the substance.

Some 15 Senators requested hearings of the chairman of the committee.

Mr. President, I ask unanimous consent that the letters of request dated September 25, 1970, be printed at this point in the RECORD.

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

SEPTEMBER 25, 1970.

HON. RUSSELL B. LONG,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are becoming increasingly concerned over threats to attach the trade bill as reported out of the House Ways and Means Committee, as an amendment to one of the remaining pieces of major Finance Committee legislation such as social security or welfare.

It is our feeling that the bill as now written constitutes a radical departure from our past policies of expanding and opening up world trade, and is a clear invitation to retaliation and trade wars that can only damage our exporters, our shippers, our balance of payments, and our entire economy.

Particularly vulnerable are our agricultural exports which last year accounted for $6.6 billion in sales and at least 700,000 American jobs. A third of our wheat, over a fifth of our feed grain, and over 40% of our soybeans are exported, principally to Japan and the Common Market countries. Sixty percent of our rice and 40% of our tobacco is dependent on foreign sales. A total of one out of four acres under cultivation, in fact, depends on exports.

But farm exports—particularly commodities such as wheat, feed grains, and soybeans—stand to suffer grave losses from the retaliation which will inevitably follow upon the enactment of a restrictive and protectionist trade bill. Common Market retaliation against soybeans alone, for example, can well cost American agriculture $200 million in lost sales, and nearly every other farm export will become vulnerable to nations seeking to protect their own agricultural production at the expense of the American farmer—the most productive in the world.

While we recognize the need to assist American industries, farmers, and workers who are unfairly damaged by foreign competition, we feel there are strong indications that H.R. 18970, as written, will actually decrease jobs and will do serious damage to the American farmer—not to mention the shipper, the manufacturer, and the consumer, all of whom have such a vital stake in the continued expansion of foreign trade.

There is an obvious need for new, comprehensive trade legislation which can form the basis for our—and the world's—trade policy in the decade of the 70's. The importance of this legislation is of such a magnitude—and the consequences of a short-sighted approach are so grave—that the Finance Committee and the full Senate must give hearings and extensive debate to whatever bill is finally sent to us by the House of Representatives. To allow precipitous action under the cover of a crowded Senate schedule and the enormous pressure for passage of social security or welfare legislation would be most unfortunate. Such an attempt, we believe, will jeopardize not only our trade policies and our economy, but the hoped-for adjournment date of October 15 and the successful passage of such vital legislation as social security and welfare.

We hope that the Finance Committee will strongly oppose any such attempt, and will insist upon the careful, responsible legislative work which has brought from your Committee the milestone trade legislation under which we have operated over the past decade. We assure you of our support in resisting any abrogation of the Finance Committee jurisdiction, as well as our help in seeking to formulate a responsible, fair, and forward-looking trade bill to guide us in expanding our world trade over the years ahead.

Sincerely,

WALTER F. MONDALE,
QUENTIN N. BURDICK,
JOHN SHERMAN COOPER,
ALAN CRANSTON,
MARK O. HATFIELD,
HAROLD E. HUGHES,
DANIEL K. INOUYE,
JACOB K. JAVITS,
CHARLES MCC. MATHIAS,
GEORGE MCGOVERN,
LEE METCALF,
ROBERT W. PACKWOOD,
CHARLES H. PERCY,
RALPH T. SMITH,
STEPHEN M. YOUNG.

Mr. JAVITS. Mr. President, this was done in an effort to have a deliberate set of hearings with notice to all parties, giving them a chance to prepare and present their case to the Finance Committee. I respectfully submit that these 2 days of hearings were hastily called with the obvious intention of then coming to the floor and seeking to affix the trade bill to such a vital domestic bill as the social security bill and stating, as I am sure would have been stated, "They have had their hearings. What else will they complain about?" That is hardly what was contemplated by our letter or what is demanded by the seriousness and controversial nature of the proposed trade legislation.

It is for that reason that I objected on Friday and was joined in that objection by Senators HATFIELD, INOUYE, MATHIAS, MCGOVERN, MONDALE, PACKWOOD, and SMITH of Illinois.

Mr. President, I ask unanimous consent that that public statement which was issued in that connection may be printed in the RECORD.

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

STATEMENT BY SENATOR JACOB K. JAVITS

The Decision of the Senate Finance Committee to hold only two days of hearings on the Trade Bill of 1970 with the implied forecast of tacking it on to the social security bill is most regrettable. A two day hearing which will conclude on the close of business on Monday just before we adjourn for a month provides a totally inadequate period of time to consider this sweeping legislation that fundamentally changes the course of the trade policy of our nation and will have a profound effect on the peace and security of the world.

If the Trade Bill is to be tacked on to the social security bill let it be done at least frankly with no pretense of hearings.

The Trade Bill of 1970 is the most controversial piece of trade legislation considered by the Congress since the enactment of the Smoot-Hawley tariff in the 1930s. If passed its effects on the American economy are likely to be sweeping and will make even more difficult the containment of the inflationary pressures that have ravaged the economy in recent years.

It will profoundly affect our relations with nations which have been our traditional friends thereby weakening our position in the world and concommitantly our national security. In a recent speech Ambassador Gilbert, the President's Special Representative for Trade Negotiations, pointed out that the shoe and textile provisions of the bill alone which could cause a reduction of $500 million in other countries exports to the United States would make inevitable retaliation against U.S. exports and/or compensating duty changes adversely affecting other U.S. producers. The nature of the retaliatory threat could hardly be adequately aired in the brief hearings scheduled by the Finance Committee.

Representatives of the workers and the industry have brought to my attention wording in the mink quota provision that would adversely affect the livelihood of some 20,000 Americans. Will this be adequately aired? Also I have been informed that the quota provision on glycene protects only one firm in the United States to the detriment of all consumers using glycene. Will two days of hearings adequately outline the supply-demand-price relationships affecting glycene?

Is it wise to legislate quotas on oil when the North and Northeast are facing a serious fuel shortage and when an Assistant Secretary of State has just warned that the oil deficit of this nation would expand rapidly throughout the 1970s? Will the hearings before the Finance Committee properly air this controversial question?

Since the end of the war, international trade negotiations generally have been non-discriminatory and multi-lateral. But the trade bill now before the Congress would turn back the clock to bi-lateral, discriminatory negotiations.

The working of the national interest provision in the bill would put a premium on the type of questionable lobbying practices both by foreign governments and domestic interests which came to characterize the granting of other quotas. The chances for abuse are enormous. Will this be adequately aired in two days of hearings before the Finance Committee?

Finally, if there is an attempt to attach the trade bill to the social security bill and to report them to the floor together, I would hope that the elderly citizens of this nation who have been most hurt by inflation will have a chance to make known their objections to this tactic whereby legislation essentially of special interest is tied to vital domestic legislation affecting the daily welfare of millions and millions of Americans.

It is for these reasons that I object to the Finance Committee's last minute hearings on the Trade Bill of 1970. I have been joined in this protest of hastily called hearings by Senators Hatfield, Inouye, Mathias, McGovern, Mondale, Packwood and Smith (Ill.)

Mr. JAVITS. Mr. President, I also ask unanimous consent that a colloquy which took place in respect of the effect of holding a committee meeting over an objection on May 23, 1961, on the floor of the Senate by former Senator Kuchel—who was then deputy minority leader—Senators MANSFIELD, MORSE, and others may be printed in this point in the RECORD.

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

COMMITTEE MEETINGS DURING SENATE SESSIONS

Mr. KUCHEL. Mr. President, I most respectfully invite the attention of Senators to a section from the Legislative Reorganization Act that reads as follows:

"No standing committee of the Senate or the House, except the Committee on Rules of the House, shall sit without special leave, while the Senate or the House, as the case may be, is in session."

In commenting on that part of the law of the land the volume "Senate Procedures" states as follows:

"No standing committee shall sit without special leave while the Senate is in session, which rule applies also to subcommittees of standing committees. Permission to sit while the Senate is in session includes all meetings, whether for hearings or the transaction of business."

Members of the minority, exercising their rights under the rules, in the past several days and weeks have interposed objections with the minority leader to the holding of committee meetings of the Senate while the Senate is in session. They were clearly within their rights in doing so, and the minority was clearly within its rights in objecting to any committee of the Senate holding hearings of any kind, with, of course, the single exception of the Committee on Appropriations. Such objection has been lodged from time to time on this side of the aisle.

The minority regrets to state that information has come to it which apparently indicates that some committees have purported to sit without right, and in violation of objections taken in accordance with the law of the Senate.

Mr. President, such an action by any committee is wrong. It is in violation of the law of this land, and it is against the rules of the Senate. The minority leader, and the acting minority leader, speaking for the minority leader, urge Senators scrupulously to follow the rules with respect to the meetings of committees during session of the Senate.

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

Mr. KUCHEL. I yield to my able friend, the majority leader.

Mr. MANSFIELD. I am wholeheartedly in accord with what the distinguished acting minority leader has said. Last week on several occasions the minority leader, the able Senator from Illinois (Mr. DIRKSEN), raised objections to the sitting of committees during the session of the Senate, and stated that he would object to such procedure during the course of the consideration of the aid-to-education bill. In his objection I concur.

Frankly, I must admit that I do not know of any committees which have been meeting, but if any committees have been meeting, I wish they would heed the objection on the part of the minority leader and the acting minority leader, and also on the part of the majority leader, who concurs with the action of Senators on the other side of the aisle, so I hope the joint endeavor will be sufficient.

Mr. KUCHEL. I thank my able friend, the distinguished majority leader, for the comments he has made. There should be no such thing as a subcommittee of a committee of the Senate sitting while the Senate is in session in the absence of complete Senate approval; and that statement goes for all purposes. That is the rule. That is the law. And they must be observed.

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

Mr. KUCHEL. I yield to the Senator from Oregon.

Mr. MORSE. May I have the attention of the majority leader and the acting minority leader, in order that I may give a small amount of free legal advice? I think the committee chairman of any full committee or subcommittee who might be conducting a hearing while the Senate is in session without the approval of the Senate ought to know that committee funds cannot be paid out for the services of an official reporter or, for that matter, for any services at all, and Senators who participated in such a hearing, if a test were made, would have to pay such expense out of their own pockets.

Mr. KUCHEL. The Senator is, of course, correct in the point he makes.

Mr. President, the illegality cuts across any function which might be performed by a committee or a subcommittee attempting to meet in the absence of the approval of the Senate.

I yield to my able friend, the Senator from Nebraska.

Mr. HRUSKA. If there is illegality in the holding of committee sessions under those circumstances, would not a motion lie to expunge from the records of the committee any testimony taken at such an illegal hearing; and should not such a motion or request be complied with?

Mr. KUCHEL. In my judgment the Senator from Nebraska is correct. Since, in the absence of approval, there is no authority whatsoever for such a meeting to be held, no one subsequently could contend that a meeting of that committee was held.

Mr. HRUSKA. When the Senator from Nebraska says "expunged" he means physically and literally taken out of the record, and permanently removed.

Mr. KUCHEL. Vitiated and extirpated.

Mr. JAVITS. Mr. President, I am not angry at anyone and I am sorry that there was some feeling that plans had been put in disarray by this objection. It was taken for a very specific reason.

I will not persist in it beyond today having made the point against the 2 days of hearings. If the committee chooses to go on with hearings, that is their privilege. I honor it. But I would feel that this point had been made very forcefully, considering the importance of the legislation and the vividness with which I saw the situation from the United Nations position, where I am now serving as designated by the Senate. We are considering there the second development decade. Trade is a critical element in the planning for the decade which seeks to better the lives of the billions of persons in the developing world. The launching of the decade itself is central to the decade, the 25th anniversary session of the United Nations General Assembly.

Mr. President, I have no parochial ideas about someone being taxed to pay for a transcript. I hope that will not be intruded into the consideration of a much broader question. I will help pay for the transcript myself, if the debate has to put it on that level. I think it is nonsense to put it on that level.

These hearings obviously will be used as a vehicle for contending there were hearings. The point is that a protest had to be made, and unhappily for me there seems to have been no one on the spot to make it except me.

I felt in conscience that I had to do it. So, for those reasons, I reiterate the objection, saying that, immediately after objecting, if the committee desires to continue its hearings from today on, I shall have no objection.

The ACTING PRESIDENT pro tempore. Objection is heard.

COMMITTEE MEETING DURING THE SESSION OF THE SENATE TODAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Interior and Insular Affairs be authorized to meet during the session of the Senate today.

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

STATE INCOME TAXATION OF INTERSTATE CARRIER EMPLOYEES

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 1280.

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

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 10634) to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salaries of employees from withholding for income tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, with an amendment to strike out all after the enacting clause and insert:

That part I of the Interstate Commerce Act is amended by redesignating section 26 as section 27 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN COMPENSATION OF EMPLOYEES FROM TAXATION AND FROM WITHHOLDING FOR INCOME TAX PURPOSES FOR OTHER THAN STATE OR SUBDIVISION OF RESIDENCE OR STATE OR SUBDIVISION WHEREIN MORE THAN 50 PER CENTUM OF COMPENSATION IS EARNED

"SEC. 26. (a) No part of the compensation paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee (1) who performs his regularly assigned duties as such an employee on a locomotive, car, or other track-borne vehicle in more than one State, or (2) who is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks out of railroad terminals in more than one State, shall be subject to the income tax laws of any State or subdivision thereof other than the State or subdivision thereof of such employee's residence, as shown on the employment records of any such carrier, and the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned.

"(b) No part of the compensation paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee (1) who performs his regularly assigned duties as such an employee on a locomotive, car, or other track-borne vehicle in more than one State, or (2) who is engaged principally in maintaining

roadways, signals, communications, and structures or in operating motor-trucks out of railroad terminals in more than one State, shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation is paid by the carrier to such employee is earned: *Provided, however,* That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence and the State or subdivision for which the withholding of such tax has been required under this Act.

"(c)(1) For the purposes of subsections (a)(1) and (b)(1), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in the calendar year while so employed.

"(2) For the purposes of subsections (a)(2) and (b)(2), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.

"(d) For the purposes of this section the term 'State' also means the District of Columbia; and the term 'compensation' shall mean all moneys received for services rendered by an employee, as defined in subsections (a) and (b) in the performance of his duties and shall include wages and salary."

SEC. 2. (a) Section 202(b) of the Interstate Commerce Act is amended by inserting after "Nothing in this part" a comma and the following: "except as provided in section 226A,".

(b) Part II of the Interstate Commerce Act is amended by inserting after section 226 a new section as follows:

"EXEMPTION OF CERTAIN COMPENSATION OF EMPLOYEES FROM TAXATION AND FROM WITHHOLDING FOR INCOME TAX PURPOSES FOR OTHER THAN STATE OR SUBDIVISION OF RESIDENCE OR STATE OR SUBDIVISION WHEREIN MORE THAN 50 PER CENTUM OF COMPENSATION IS EARNED

"SEC. 226A. (a) No part of the compensation paid by any motor carrier subject to the provisions of this part or by any private carrier of property by motor vehicle, to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be subject to the income tax laws of any State or subdivision thereof other than the State or subdivision thereof of such employee's residence, as shown on the employment records of such carrier, and the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned.

"(b) No part of the compensation paid by any motor carrier subject to the provisions of this part or by any private carrier of property by motor vehicle, to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: Provided however, That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence, and the State or subdivision for which the withholding of such tax has been required under this Act.

"(c) For the purposes of subsection (a) and (b), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in the calendar year while so employed.

"(d) For the purpose of this section the term 'compensation' shall mean all moneys received for services rendered by an employee, as defined in subsections (a) and (b) in the performance of his duties and shall include wages and salary."

SEC. 3. (a) Part III of the Interstate Commerce Act is amended by redesignating section 324 as section 325 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN COMPENSATION OF EMPLOYEES FROM TAXATION AND FROM REPORTING FOR INCOME TAX PURPOSES FOR OTHER THAN STATE OR SUBDIVISION OF RESIDENCE OR STATE OR SUBDIVISION WHEREIN MORE THAN 50 PER CENTUM OF COMPENSATION IS EARNED

"SEC. 324. (a) No part of the compensation paid by any water carrier subject to the provisions of this part or by any water carrier or class of water carriers operating on inland or coastal waters under an exemption provided therein, to an employee who performs his regularly assigned duties as such an employee on a vessel in more than one State, shall be subject to the income tax laws of any State or subsivision thereof other than the State or subdivision thereof of such employee's residence, as shown on the employment records of any such carrier, and the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned.

"(b) No water carrier subject to the provisions of this part nor any water carrier or class of water carriers operating on inland or coastal waters under an exemption provided therein shall file any information return or other report for income tax purposes with respect to the compensation paid to any employee who performs his regularly assigned duties as an employee of such carrier in more than one State with any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier, and the State or subdivision in which such employee earned more than 50 per centum of the compensation paid him by such carrier during the preceding calendar year.

"(c) For the purposes of subsections (a) and (b), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.

"(d) For the purpose of this section the term 'compensation' shall mean all moneys received for services rendered by an employee, as defined in subsections (a) and (b) in the performance of his duties and shall include wages and salary."

(b) The table of contents contained in section 301 of the Interstate Commerce Act is amended by striking out

"Sec. 334 Separability of provisions."

and inserting in lieu thereof:

"Sec. 324. Exemption of certain compensation of employees from taxation and from reporting for income tax purposes for other than State or subdivision of residence and State or subdivision wherein more than 50 per centum of compensation is earned.

"Sec. 325. Separability of provisions."

SEC. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by inserting after section 1111 the following new section:

"EXEMPTION OF CERTAIN COMPENSATION OF EMPLOYEES FROM TAXATION AND FROM WITHHOLDING FOR INCOME TAX PURPOSES FOR OTHER THAN STATE OR SUBDIVISION OF RESIDENCE OR STATE OR SUBDIVISION WHEREIN MORE THAN 50 PER CENTUM OF COMPENSATION IS EARNED

"SEC. 1112. (a) No part of the compensation paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State, shall be subject to the income tax laws of any State or subdivision thereof other than the State or subdivision thereof of such employee's residence, as shown on the employment records of such carrier, and the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned.

"(b) No part of the compensation paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: *Provided, however,* That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence and the State or subdivision for which the withholding of such tax has been required under this Act.

"(c) For the purposes of subsections (a) and (b), an employee shall be deemed to have earned 50 per centum of his compensation in any State or subdivision in which his scheduled flight time in such State or subdivision is more than 50 per centum of his total scheduled flight time in the calendar year while so employed.

"(d) For the purposes of this section the term 'State' also means the District of Columbia, any of the possessions of the United States, and the Commonwealth of Puerto Rico; and the term 'compensation' shall mean all moneys received for services rendered by an employee, as defined in subsections (a) and (b) above in the performance of his duties and shall include wages and salary."

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following:

"Sec. 112. Exemption of certain compensation of employees from taxation and from withholding for income tax purposes for other than State or subdivision of residence and State or subdivision wherein more than 50 per centum of compensation is earned."

SEC. 5. The amendments made by this Act shall become effective on the first day of the

first calendar year beginning after the date of enactment of this Act.

SEC. 6. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application of the provision to other persons or other circumstances shall not be affected thereby.

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 amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain compensation of employees from multiple taxation and withholding for income tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of residence or the State or subdivision wherein more than 50 per centum of compensation is earned, and for other purposes."

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1261), explaining the purposes of the measure.

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

BACKGROUND AND NEED SECTION

The Senate Commerce Committee in favorably reporting this legislation determined that interstate commerce is unreasonably burdened by certain income taxation policies of some States insofar as such policies affect interstate carrier employee's income.

The problem addressed by this legislation is peculiar to those employees who are required by the nature of their employment to work in more than one State on a regular basis. Tax policies in some States have created great hardships both for interstate carriers and interstate carrier employees. Certain States have insisted upon withholding from employees an amount based upon the employee's entire annual income even though the portion of the employee's income derived from performance of duties within the State in question may have represented a very small proportion of his total income. In many instances this has meant that some employees were deprived of a substantial amount of their income throughout the year. It is no answer that at the end of the year a good portion of that money might be returned to the employee.

The employer is also confronted with serious problems. State withholding provisions typically require that the employer determine the amount of income earned by an employee in a particular State and that the employer take care of all other administrative details that are related to withholding. Some States which do not require withholding nonetheless require the employer to file periodic information returns. Where several States and numerous employees are involved, the administrative load can be extremely onerous for the employer.

However, withholding and the requirement of filing information returns with all of the jurisdictions asserting a right to tax any portion of the compensation of the employee are not the only problems. For the employee multiple State tax liability is itself a burden. There is no uniform taxing formula which must be applied by the States with the result that it is possible for an employee to be subjected to tax liability in a number of different States.

In hearings before the committee, numerous witnesses, representing all manner of viewpoints on the issues, appeared or provided statements for the hearing record. Included among those who testified were representatives of the Interstate Commerce Tax Reform Committee (a group formed by certain members of the International Brotherhood of Teamsters; Flight Engineers International Association; Marine Firemen's Union of the SIU; Sailor's Union of the Pacific, SIU; National Engineer's Beneficial Association; the Airline Pilots Association, and the Marine, Cooks, & Stewards of the Seafarer's International Union); the Brotherhood of Locomotive Engineers; Association of American Railroads; Western Highway Institute; National Association of Motor Bus Owners; Congress of Railway Unions; Multistate Tax Commission; Flight Engineers' International Association, AFL–CIO; American Trucking Associations, Inc.; Air Lines Pilots Association; Greyhound Lines; Department of Revenue for the State of Arkansas; National Association of Tax Administrators; Tax Commissioner for the State of North Dakota; New York State Department of Taxation and Finance; Bureau of Revenue for the State of New Mexico; State of Nebraska, Income Tax Division; Department of Revenue for the State of Iowa; Director of Revenue, State of Illinois; Income Tax Division, State of Alabama; State Tax Commission, State of Nebraska; Department of Revenue, State of Alaska; Department of Revenue, State of Washington; and Air Transportation Association.

The hearing record provides several examples of the difficulty. One trucking company provided the committee with information showing that it had numerous drivers who worked in several different States. For example, 342 of its drivers drove in 19 different States, 397 of its drivers drove in 11 States and hundreds of additional drivers for just this one company worked regularly in five or more States. If the majority of those States taxed the income of the driver, it can readily be seen that the employer and the employee would be faced with a monumental task of first of all determining tax liability and secondly complying with the individual tax laws of every one of those States. Some of the difficulties created by multiple State taxation were set forth in the hearings. For example the following assertions were made:

(1) Proper withholding for nonresident employees requires complete knowledge of what are often numerous and often complicated State laws, rules, and regulations.

(2) Determination of the exact amount to be withheld is very difficult, due to lack of uniformity among the State withholding laws.

(3) Payroll procedures, even though in many instances computerized, are subject to continuous change because the routes traversed by an individual driver or airline pilot vary from State to State and in the case of airlines probably vary on each flight.

(4) The cost of administering the nonresident withholding requirements is extensive.

(5) In the majority of instances, cost of administration exceeds the amount of tax withheld and transmitted to the State.

One of the more burdensome problems is confronted by airline pilots who in the course of a few hours of employment might fly over several different States. And these pilots for the same general route may fly over different States for different periods of time each time that same route is flown.

To be sure, not all States impose net income taxes on individuals. But at the present time 38 States do impose such a tax. All of those States require withholding on the full amount earned by residents and 31 of those States require withholding on amounts earned by residents and nonresidents within their borders. In addition, numerous cities impose income taxes and require withholding as to both residents and nonresidents.

The original version of S. 2044 and H.R. 10634 related solely to the withholding and reporting problems. Each State except the State of residence would have been precluded from requiring reporting or withholding for tax purposes from the wages of interstate carrier employees.

It became apparent in the course of the committee's hearings and later deliberations on the problems confronting interstate carrier employees that elimination of multiple withholding was only a partial answer and in fact, would place the employee in greater jeopardy than he would have been had the bill not been passed. This is true because the elimination of a State's power to require withholding has no bearing on the State power to tax. So it could easily happen that an employee would find himself at the end of the year with tax liability in several States but with an inadequate amount of money withheld and consequently a very serious and unexpectd financial burden. Indeed, it has come to the Committee's attention since the hearings that certain railroad employees and others are being required to file information returns prior to the taxing date. On the other hand, the hearing record includes testimony expressing concern that a bill confined to limiting withholding and the filing of information returns to the State of an interstate carrier's employees residence, an originally contemplated, might induce non-resident interstate carrier employees to evade non-resident State income taxes which might properly be due.

The Committee concluded, therefore, that legislation in this area would be incomplete if it did not address the very basic problem of multiple State tax liability along with the problem of multistate withholding and/or reporting for taxation purposes.

SUMMARY OF BILL

The amended bill does three basic things:

(1) Limits power to tax income of interstate carrier employees to the employee's State of residence *and* any State in which he earns more than 50 per centum of the compensation paid to him by such employer;

(2) Limits power to require withholding for tax purposes from income of interstate carrier employees to either the State in which such employee earned more than 50 per centum of the compensation paid to him by such carrier during the preceding calendar year *or* the State of residence;

(3) Limits the power to require the filing of information returns to the State of residence *and* the State by which withholding may be required.

COMMITTEE AMENDMENTS

The Committee amended the House-passed bill so as to provide relief from taxation by more than two States of the compensation paid to employees of interstate carriers in addition to providing relief from multiple withholding and reporting requirements as in the House-passed bill. The Committee amendments, unlike the House-passed bill, do not limit withholding and reporting to the State or subdivision of the employee's residence but rather would require withholding for the account of either the State or subdivision in which more than 50 per centum of an employee's compensation was earned during the preceding calendar year or, if there is no such State, the employee's State of residence, and would require reporting to both the State of residence and any other State permitted to require withholding.

As in the House-passed bill, the Committee amendment omits reference to withholding from the wages of employees of water carriers. Reference to withholding was omitted because the wages of such employees are exempted from withholding for any purpose under section 601 of the Shipping Laws of the United States (46 U.S.C. 601) and no change in the present law as respects withholding is contemplated. Reporting relief for

employers and relief from multiple-tax liability for employees of interstate water carriers, neither of which is covered under section 601, is provided in the same manner and to the same extent such relief has been provided for interstate carriers and their employees in other sections of the bill.

The Committee amendments to the House-passed bill are shown as follows (language to be omitted is enclosed in black brackets, new matter is printed in italic):

A bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain [wages and salary] *compensation* of employees from *multiple taxation and* withholding for income tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of [the employee's] residence *or the State or subdivision wherein more than 50 per centum of compensation is earned, and for other purposes*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part I of the Interstate Commerce Act is amended by redesignating section 26 as section 27 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN [WAGES AND SALARIES] COMPENSATION OF EMPLOYEES FROM TAXATION AND FROM WITHHOLDING FOR INCOME TAX PURPOSES FOR OTHER THAN STATE OR SUBDIVISION OF RESIDENCE OR STATE OR SUBDIVISION WHEREN MORE THAN 50 PER CENTUM OF COMPENSATION IS EARNED

"SEC. 26. (a) No part of the [wages or salary] *compensation* paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee (*1*) who performs his regularly assigned duties as such an employee on a locomotive, car, or track-borne vehicle in more than one State, or (*3*) who is engaged principally [in more than one State,] in maintaining roadways, signals, communications and structures or in operating motor trucks out of railroad terminals *in more than one State, shall be subject other than the State or subdivision thereof of such employee's residence, as shown on the employment records of any such carrier, and the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned.*

"(b) *No part of the compensation paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee (1) who performs his regularly assigned duties as such an employee on a locomotive, car, or other track-borne vehicle in more than one State, or (2) who is engaged principally* [in more than one State], *in maintaining roadways, signals, communications and structures or in operating motor trucks out of railroad terminals in more than one State,* shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision *wherein more than 50 per centum of the compensation is paid by the carrier to such employee earned: Provided, That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision shall be required only for the State or subdivision* of the [such] employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for income tax purposes with respect to such [wages or salary] *compensation* with any State or subdivision thereof other than such State or subdivision of residence *and the State or subdivision for which the withholding of such tax has been required under this Act.*

"(c)(*1*) *For the purposes of subsections (a)(1) and (b)(1), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in any calendar year while so employed.*

"(*2*) *For the purposes of subsections (a) (2) and (b) (2), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.*

"[(b)](*d*). For the purposes of this section the term 'State' also means the District of Columbia; *and the term 'compensation' shall mean all moneys received for services rendered by an employee, as defined in subsections (a) and (b) in the performance of his duties and shall include wages and salary.*"

SEC. 2. (a) Section 202(b) of the Interstate Commerce Act is amended by inserting after "Nothing in this part" a comma and the following: "except as provided in section 226A,".

(b) Part II of the Interstate Commerce Act is amended by inserting after section 226 a new section as follows:

"EXEMPTION OF CERTAIN [WAGES AND SALARY] *compensation* OF EMPLOYEES *from taxation and* FROM WITHHOLDING FOR INCOME TAX PURPOSES [BY] FOR OTHER THAN [RESIDENCE] STATE *or subdivision of residence or state or subdivision wherein more than 50 per centum of compensation is earned*

"SEC. 226A. (a) No part of the compensation paid by any motor carrier subject to the provisions of this part or by any private carrier of property by motor vehicle, to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be *subject to the income tax laws of any State or subdivision thereof other than the State or subdivision thereof of such employee's residence, as shown on the employment records of such carrier, and the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned.*

"(b) *No part of the compensation paid by any motor carrier subject to the provisions of this part or by any private carrier of property by motor vehicle, to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be* withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision *wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: Provided, however, That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the* [such] employee's residence, as shown on the employment records of any such carrier, nor shall such carrier file any information return or other report for income tax purposes with respect to such [wages or salary] *compensation* with any State or subdivision thereof other than such State or subdivision of residence, *and the State or subdivision for which the withholding of such tax has been required under this Act.*

"(c) *For the purposes of subsections (a) and (b), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in the calendar year while so employed.*

"[(b)] (*d*) For the purpose of this section the term ['State' also means any possession of the United States or the Commonwealth of Puerto Rico] *'compensation' shall mean all moneys received for services rendered by an employee, as defined in subsections (a) and (b) in the performance of his duties and shall include wages and salary.*"

[SEC. 3. Part III of the Interstate Commerce Act is amended by redesignating section 324 as section 325 and by inserting immediately after section 323 the following:

"FILING OF INFORMATION RETURNS OR OTHER REPORTS FOR INCOME TAX PURPOSES WITH OTHER RESIDENCE STATE

"SEC. 324. No water carrier or vessel operator shall file any information return or other report for income tax purposes with any State or subdivision of residence of the employee concerned, as shown on the employment records of such water carrier or vessel operator, with respect to the wages or salary of any master, officer, or seaman who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal or noncontiguous trade or in the fisheries of the United States."

(b) The table of contents contained in section 301 of the Interstate Commerce Act is amended by striking out

"Sec. 324. Separability of provisions."

and inserting in lieu thereof:

"Sec. 324. Filing of information returns or other reports for income tax purposes with other than residence State.

"Sec. 324. Separability of provisions."]

Sec 3. (a) Part III of the Interstate Commerce Act is amended by redesignating section 324 as section 325 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN COMPENSATION OF EMPLOYEES FROM TAXATION AND FROM REPORTING FOR INCOME TAX PURPOSES FOR OTHER THAN STATE OR SUBDIVISION OF RESIDENCE OR STATE OR SUBDIVISION WHEREIN MORE THAN 50 PER CENTUM OF COMPENSATION IS EARNED

"*Sec. 324. (a) No part of the compensation paid by any water carrier subject to the provisions of this part or by any water carrier or class of water carrier operating on inland or coastal waters under an exemption provided therein, to an employee who performs his regularly assigned duties as such an employee on a vessel in more than one State, shall be subject to the income tax laws of any State or subdivision thereof other than the State or subdivision thereof of such employee's residence, as shown on the employment records of any such carrier; and the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned.*

"(b) *No water carrier subject to the provisions of this part nor any water carrier or class of water carriers operating on inland or coastal waters under an exemption provided therein shall file any information return or other report for income tax purposes with respect to the compensation paid to any employee who performs his regularly assigned duties as an employee of such carrier in more than one State with any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier, and the State or subdivision in which such employee earned more than 50 per centum of the compensation paid him by such carrier during the preceding calendar year.*

"(c) *For the purposes of subsection (a) and (b), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.*

"(d) *For the purpose of this section the term 'compensation' shall mean all moneys received for services rendered by an em-*

ployee, as defined in subsections (a) and (b) in the performance of his duties and shall include wages and salary."

(b) The table of contents contained in section 301 of the Interstate Commerce Act is amended by striking out "Sec. 324. Separability of provisions." and inserting in lieu thereof:

"Sec. 324. Exemption of certain compensation of employees from taxation and from reporting for income tax purposes for other than State or subdivision of residence and State or subdivision wherein more than 50 per centum of compensation is earned.

"Sec. 325. Separability of provisions."

SEC. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by inserting after section 1111 the following new section:

"EXEMPTION OF CERTAIN [WAGES AND SALARY] *compensation* OF EMPLOYEES *from taxation and* FROM WITHHOLDING FOR INCOME TAX PURPOSES [BY] FOR OTHER THAN [RESIDENCE] *State or subdivision of residence or state or subdivision wherein more than 50 per centum of compensation is earned*

"SEC. 1112. (a) No part of the [wages or salary] *compensation* paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State, shall be *subject to the income tax laws of any State or subdivision thereof other than the State or subdivision thereof of such employee's residence, as shown on the employment records of such carrier; and the State or subdivision where in more than 50 per centum of the compensation paid by the carrier to such employee is earned.*

"(b) *No part of the* [wages or salary] *compensation paid or any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State, shall be* withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision *wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned. Provided, however, That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or subdivision thereon during the preceding calendar year, then withholding shall be required only for the State or subdivision of the* [such] employee's residence, as shown on the employment records of any such carrier; nor shall such carrier file any information return or other report for income tax purposes with respect to such [wages of salary] *compensation* with any State or subdivision thereof other than such State or subdivision or residence *and the State or subdivision for which the withholding of such tax has been required under this Act.*

"(c) *For the purposes of subsections (a) and (b), an employee shall be deemed to have earned 50 per centum of his compensation in any State or subdivision in which his scheduled flight time in such State or subdivision is more than 50 per centum of his total scheduled flight time in the calendar year while so employed.*

"(d) For the purposes of this section the term "State' also means the District of Columbia, [and] any of the possessions of the United States, [or] *and* the Commonwealth of Puerto Rico; *the term 'compensation' shall mean all moneys received for services rendered by an employee, as defined in subsections (a) and (b) above in the performance of his duties and shall include wages and salary."*

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "Title XI—Miscellaneous" is amended by adding at the end thereof the following:

"SEC. 1112. Exemption of certain [wages and salary] *compensation* of employees *from taxation and* from withholding for tax purposes for other than [residence] State *or subdivision of residence and State or subdivision wherein more than 50 per centum of compensation is earned."*

SEC. 5. The amendments made by this Act shall become effective on the first day of the first calendar year beginning after the date of enactment of this Act.

Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or other circumstances shall not be affected thereby.

EXPLANATION OF COMMITTEE SUBSTITUTE

The Committee substitute follows the same general lines of the original bill, S. 2044 and H.R. 10634, as to substance and approach but, as indicated previously, unlike those bills, is not confined to withholding and reporting relief for employers. The bill as reported also addresses itself to the burdens on employees of multiple withholding and income taxation by the States and subdivisions. It extends the basic principle of the original bill to relieve employees of interstate transportation companies from multiple state tax liability using the same type of approach as that which would have been afforded to carriers by the original legislation.

Under the substitute, as under the original bill, the carrier is relieved of the burden of making withholding payments to more than one State or subdivision. However, under the substitute any State in which the employee earned more than 50 percentum of the compensation paid him by his interstate carrier employer during the preceding year is entitled to require withholding. If no other State is entitled to require withholding the State of the employee's residence as shown on the employer's records may do so. Under the substitute, the carriers' interstate employees are likewise relieved from demand on his tax dollar by more than two States or subdivisions, i.e. the State or subdivision of residence and the State or subdivision wherein more than 50 per centum of the employee's carrier income is earned.

The Committee's substitute has been carefully drawn to incorporate the principal features of the Multistate Tax Commission's model bill* which recently was adopted by that body with only one dissenting vote.

The Multistate Tax Commission has indicated a strong preference for continuing to make attempts to resolve the interstate income tax problem through their members without federal intervention of any kind. However, if there is to be federal legislation on the subject, the Commission indicated a strong preference for the provisions incorporated in the Committee substitute. The Committee feels that action must be taken on a federal level.

The Committee bill reserves to the individual States the present practice of taxing substantial compensation which is earned by a non-resident. However, it would limit that practice in accordance with the recommendation of the Multistate Tax Commission to States wherein more than 50 per centum of the non-resident interstate carrier employer's compensation is earned.

The bill does not eliminate entirely the problem of double taxation although it does reduce the number of States which may assert the right to tax compensation paid to employers of interstate carriers to two. Unless the States enter into reciprocal agreements affording equitable and simple solutions to the problem an undue hardship may continue to be imposed upon the employees of interstate carriers.

The withholding provisions of the Committee bill provide that the employer may be required to withhold only by the State or subdivision in which its employee earns most of his compensation with the proviso that if the employee does not earn more than half of his compensation in any one State or subdivision, then the employer may be required to withhold only by the State or subdivision of such employee's residence. In the application of the 50 per centum test, the Committee recognizes that certain problems will confront employers, particularly with regard to either new or transferred employees. The Committee is cognizant of the fact that generally withholding will be based upon stable work assignments involving employees who work where they live and, therefore, will be determined by the residence of the employee.

In order to avoid the difficult and perplexing problem which may confront carriers in making determinations in those cases of shifting and mobile work assignments of interstate transportation employees, the determination under this part of the bill should be based upon the employee's work experience during the year prior to the taxable year as shown on the carrier's employment record. Reliance upon payroll experience of the previous tax year will more than likely resolve problems for most employers. Accordingly, the bill provides (for the purposes of withholding) that such experience shall be used for the determination of whether an employee would earn more than 50 per centum of his compensation in any given State or subdivision for any particular taxable year. For those few employees, such as new or transferred employees whose work experience is not a reliable guide, obligation to withhold should be based upon their place of residence, as shown on the employers records, and the bill so provides. The Committee believed that carriers should have these general guidelines to follow in ascertaining the State for which they will be required to withhold taxes for employees working in more than one State.

In deference to the position taken by the Multistate Tax Commission in its model bill the substitute uses the word "compensation" rather than the words "wages and salary" to describe the taxable income to which the bill refers. "Compensation" is defined to include all monies received from the carrier for services, including wages and salary, and it is to be determined on an annual basis.

Another important feature of the legislation is the method provided for determining the amount of compensation earned in any State or subdivision. For railroad and motor carrier operators the amount of compensation attributable to a particular State or subdivision is based upon mileage traveled. For railroad maintenance or local terminal operators, and operators for air transport and water carriers, time is the basis used. These formulas answer the need for some standard method not now available. The traditional recordkeeping methods of the carriers were relied upon for the selection of a time or mileage factor.

Finally, it should be noted that in addition to extending coverage to certain domestic water carriers, as discussed earlier, the reported bill retains the House provision extending coverage to certain railroad maintenance and local terminal operating personnel.

COST

This legislation will not result in any cost to the Federal Government.

Mr. BYRD of West Virginia. Mr. President, that completes the call of the unobjected to items on the Legislative Calendar.

*Multistate Tax Commission correspondence is reprinted herein among Agency Comments.

PERIOD FOR THE TRANSACTION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the unanimous-consent agreement previously entered into, there will now be a brief period for the transaction of routine morning business with the statements therein limited to 3 minutes.

EXCHANGES OF MESSAGES BETWEEN POPE PAUL VI AND SECRETARY GENERAL U THANT

Mr. JAVITS. Mr. President, the Secretary General of the United Nations has called to my attention as extraordinary exchange of correspondence between His Holiness Pope Paul VI and the Secretary General based on the views of the Holy Father with respect to the operations and the future of the United Nations in its work with respect to the second development decade and the responding message of the Secretary General.

Mr. President, the Holy Father repeated the words he pronounced October 1965, from the Tribune of the General Assembly of the United Nations:

> This organization represents the path that has to be taken for modern civilization and for world peace.

Mr. President, notwithstanding its vicissitudes, and it has had many, and its inadequacies, and there are many, I deeply believe that this is still true today and that it would be a great mistake to dismantle the United Nations purposefully or to threaten it by eroding such capabilities as it has developed with respect to peace and security of all mankind.

The Secretary General feels that this is one of the most eloquent expressions of the meaning of the United Nations. I think his opinion is extremely valuable.

I ask unanimous consent that this exchange of messages between His Holiness Pope Paul VI and Secretary General U Thant be printed at this point in the RECORD.

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

EXCHANGE OF MESSAGES BETWEEN HIS HOLINESS POPE PAUL VI AND SECRETARY-GENERAL, U THANT, ON OCCASION OF TWENTY-FIFTH ANNIVERSARY OF UNITED NATIONS

MESSAGE OF HIS HOLINESS POPE PAUL VI

At this time when the United Nations Organization is celebrating the twenty-fifth anniversary of its foundation, we are happy to convey to it, through your good offices, our confident good wishes, and the assurance of our good-will and our support for its worldwide mission. Today we wish once more to repeat the words which we had the honour to pronounce on 4th October 1965 from the tribune of your Assembly: "This Organization represents the path that has to be taken for modern civilization and for world peace."

Is not an anniversary such as this a propitious occasion for assessing and reflecting upon the results which it has been possible to achieve in the course of this first quarter of a century? If it has not been possible to fulfill the expectations and hopes which were raised when your institution came into being, it must at least be recognized that is within the United Nations Organization that the desire of governments and peoples to work together efficaciously for the establishment of brotherly unity is most surely followed up. Where else, moreover, could these governments and peoples better find a bridge to link them, a table round which they can gather, and a tribunal where they may plead the cause of justice and peace? Even if the sources of violence still smoulder, flaring up here and there into fresh conflagrations, the conscience of humanity still makes itself heard no less clearly in this privileged forum where, going beyond selfish rivalries, men find once more that inalienable part of themselves which unites them all—the human element in man.

Is it not so as to assure, ever more firmly, respect for this human element that your Assembly has rightly taken pains to lay down, in appropriate texts, pacts or declarations, the conditions of dignity, of freedom and of security which must be guaranteed "by all, in all places and for all"? At this agonizing hour of their history, the peoples are more vividly aware than ever of the gap which separates these generous resolutions from their effective implementation. In the face of so many inextricable situations, conflicting interests, deeply rooted prejudices and the tragic series of conflicts, discouragement lies in wait for even the best, as they witness the collapse of the hope of peaceful coexistence by obstinately hostile forces. Let us presume to say this: there will be no lasting peace until a new spirit impels individuals, social groups and nations to true reconciliation. That is why we must strive untiringly to substitute relationships based on force with relationships of deep understanding, mutual respect and creative collaboration.

Proclaimed more than twenty years ago by your Assembly, the Charter of Human Rights remains in our view one of its greatest claims to fame. To ask that all, without distinction of race, age, sex or religion should be able to enjoy human dignity and the conditions necessary for its exercise—is not this to express strongly and clearly the unanimous aspiration of men's hearts and the universal witness of their consciences? No violation in practice can stifle the recognition of this inalienable right. But in circumstances of prolonged oppression, who will prevent those who are humiliated from succumbing to the temptation of what seems to them to be the solution of despair?

In spite of inevitable checks and the many obstacles placed in the way of such a vast body by its very complexity, it must be the honoured task of your Assembly to lend its voice to those who are not able to make themselves heard, to denounce, without care for ideologies, all oppression, whatever its source, and to ensure that cries of distress receive a hearing, just requests be taken into consideration, the weak be protected against the violence of the strong and the flame of hope thus be kept burning in the breast of the most humiliated section of mankind. It is to the heart of each man—"for the real danger comes from man"—that it is necessary to repeat untiringly: "what have you done to your brother?", that brother who, for so many believers throughout the world, is marked with the indelible imprint of the living God, Father of all men.

For nations just as for men, to speak of rights involves the spelling out of duties. This is what we said to you here five years ago: your purpose is to understand one another, to go forward together, to reject the domination of some by others, to ensure that never again will some fight against others but that all work for each other. This is a vast enterprise, truly worthy of uniting the good will of all into one immense and irresistible effort for that integral development of man and that interdependent development of mankind to which we have boldly invited them, in the name of a "full-bodied humanism", in our Encyclical *Populorum Progressio*.

As the Second Development Decade dawns, who better than the United Nations Organization and its specialized agencies will be able to take up the challenge presented to all mankind? It is a question of ensuring that the nations, while preserving their identity and original way of life, shall agree at least on the means to be taken to support their common will to live, and, in the case of some of them, to assure their survival. Let us recognize this fact: the common good of the nations, be they large or small, demands that states should rise above their merely nationalistic interests, so that the most brilliant schemes may not remain a dead letter and that well ordered dialogue structures may not be dislocated by plans capable of putting all mankind in peril. Is it not surrendering mankind to an uncertain and perhaps catastrophic future to continue to throw away on war budgets the most astonishing opportunities for progress that mankind has ever known? Has not the hour struck for reason to take stock of that terrifying future which so much wasted energy risks preparing for the world? "They will hammer their swords into ploughshares, their spears into sickles." May your untiring perseverance, placed at the service of all plans for reciprocal and controlled disarmament, ensure in our industrial age the realization of those words of this ancient prophet of the agricultural era. May it ensure that the resources thus made available are employed for scientific progress, for the harnessing of the immense resources of land and sea and for the sustenance of the ever growing numbers of the members of the human race. May the work of the living never be used against life; on the contrary, let it be used to feed that life and to make it truly human. With imagination, courage and perseverance, you will thus enable all peoples peacefully to take their rightful place in the concord of nations.

To move forward this new dynamism requires, it must be said, a radical change of attitude, in order to acquire "a new way of thinking about the pathways of history and the destinies of the world". There is scarcely need to emphasize the fact that spiritual progress does not stem from material progress —to which however it alone gives true meaning—as the effect from its cause. Technical achievements, however admirable, do not of themselves bring moral advance. When science advances from success to success, its use places ever greater demands upon the conscience of the man who sets it to work. The modern world, troubled in its most dynamic and most youthful elements by the gravest question that has ever assailed it, the question of its survival, hesitates between fear and hope, and desperately searches for a meaning to give its arduous ascent, to make it genuinely human.

It is thus of capital importance that your Organization has recognized among the fundamental rights of the human person what our venerable predecessor John XXIII called man's right "of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public": this is religious freedom, the complete value of which was fully affirmed by the Church in the Ecumenical Concil. But alas, this most sacred of all rights is for millions of men, innocent victims of intolerant religious discrimination, ridiculed with impunity. And so we turn with confidence towards your distinguished Assembly, in the hope that it will be able to promote, in a domain so fundamental to the life of man, an attitude in conformity with the insuppressible voice of conscience, and to ostracize conduct incompatible with the dignity of mankind.

How great is the hope reposed in your Organization that it may achieve that community of free men which is the ideal of humanity; how great is the vigour it must show to bring such a programme to fulfilment. But, as a great contemporary think-

er has so rightly observed, "The more difficult this immense task, the more it must attract men. People are not moved to act except for difficult things".

There exists in effect a common good of man, and it is up to your Organization, because of its dedication to universality, which is its reason for being, to promote it untiringly. In spite of permanent tensions and unceasingly recurring oppositions, the unity of the human family shows itself more and more in the very rejection of injustice and war and in the very hope of a world of fraternity where people and communities can freely develop themselves according to their material, intellectual and spiritual potentialities. In the midst of the worst confrontations there appears ever more strongly the aspiration towards a world where force—especially that of the strongest—no longer dominates with its blind and selfish weight, but where force is the exercise of a larger and higher responsibility at the service of a free and healthy cooperation among all human groups, in mutual respect for their own proper values.

Is not the task of the United Nations that of strengthening states against the temptations and helping peoples on the road towards a society where each one may be recognized, respected, and supported in his efforts to achieve spiritual growth towards a greater command of self in genuine freedom? Yes, the work of man and the conquests of human genius meet the design of God the Creator and Redeemer provided that his intelligence and his heart rise to the level of his science and his technology and are able to eliminate the forces of division, that is of dissolution, which are always at work in the human race.

So we renew our confidence that your Organization will be able to meet the immense hope of a world fraternal community in which each one can live a really human life. As disciples of him who gave his life to reunite the scattered children of God, Christians for their part, buoyed up by the hope which is drawn from the message of Christ, intend to take an energetic part in this great work in collaboration with all men of good will.

May the United Nations, in the unique position it occupies, apply itself resolutely to this task and go forward with confidence and courage. Upon this generous future in the service of all men and of all peoples, we invoke from our heart the blessing of the Almighty.

MESSAGE OF SECRETARY-GENERAL, U THANT

Allow me, first of all, to express to you my deep gratitude for the message which You kindly addressed to me on the occasion of the twenty-fifth anniversary of the United Nations. This message joins the moving statement which You delivered on 4 October 1965 to the General Assembly of the Organization and, in giving voice to Your wholehearted support to the United Nations, both messages constitute a source of strength for all of us.

During this silver jubilee session, from 14 to 24 October, special commemorative meetings of the General Assembly will take place with the participation of a large number of Heads of State and Heads of Government. We expect this will be the largest meeting of the leaders of nations in the history of the world and one which offers a unique opportunity for exchanges of views at the highest level. It should also be an occasion for the Member States to reaffirm their support of the Organization and to renew their dedication to the principles upon which the United Nations is based.

In reaching its first quarter century of growth, the United Nations must look squarely at the problems confronting humanity and set itself on a course which draws on the experience of the past and derives impetus from the objectives it has set itself for the future.

While we can derive some comfort from the fact that a third world war has been averted up to now, our anxiety is great when we still see so many instances of war and violence in the world, each of which not only causes cruel destruction of human lives but also can potentially develop into wider conflicts which may endanger the peace of the globe. Our anxiety is also great when we observe the staggering sums which are devoted to armaments so powerful and destructive that they imperil the very existence of man on earth.

Is it not incomprehensible that now, when man has for the first time in history the means of conducting a large-scale attack against poverty, disease and ignorance, most of his resources and attention should be devoted to the development and production of armaments of mass destruction while the assets to attend to the needs of humanity either remain stagnant or even suffer a decline?

In Your message, You give Your support to the universal vocation of the United Nations. I am delighted that You should have mentioned this most important objective of the Organization. On a recent occasion, I placed the necessity of making the United Nations universal as quickly as possible, as the first of the main problems to which we ought to direct our attention during this twenty-fifth anniversary of the United Nations. I regard this goal as one of our most important and urgent objectives. The dialogue between all nations and states of the world should be pursued with renewed vigour, for all countries should have their share of responsibility in world affairs.

As You have rightly said, peace will be ephemeral so long as a new spirit does not push towards a truthful reconciliation among men, social groups and peoples. The growth and enhancement of the international community requires basic changes in governmental attitudes toward problems which concern the planet as a whole. It is all too clear that we shall not be able to move ahead with the speed which the circumstances urgently require unless we approach our problems of managing our small planet from a global point of view and unless the nations of the world increase their determination to abide, really and effectively, by the principles of the Charter.

The successful conclusion of instruments such as the Universal Declaration of Human Rights, the Covenants on Human Rights, the Declaration against All Forms of Discrimination now requires that we should turn our attention to the means for implementing their provisions. In the final analysis, all the problems of mankind are problems of ensuring the enjoyment by every human being of his fundamental rights, whether at the national or international level.

The struggle to narrow the gap between the rich and the poorer nations must be intensified if we wish to see the present unsatisfactory trends arrested and turned into a real effort at co-operation to enhance not only the material but also the spiritual quality of life. As Your Holiness has so wisely said in the past, peace is development. We would be courting disaster if we did not help in accelerating the pace of development of the large majority of nations still suffering from the ills of poverty, ignorance and disease.

Not even in the field of decolonization, where so much has been accomplished in the last two and a half decades, can we afford to relax our efforts for there are still stubborn examples of colonialism which show no signs of solution, notwithstanding the clear recommendations of the General Assembly and its subsidiary organs.

The milestone of the twenty-fifth anniversary is not only an occasion for stock-taking but also one to examine all that still has to be done to bring about a peaceful and stable world order. Perhaps it is also a time to make a fresh start and to urge Governments to lift themselves once again to the same high level of determination and vision as that of the authors of the Charter. On 26 June 1970 in San Francisco, the birthplace of the United Nations, I pleaded to the nations of the world, especially the powerful ones, to give the Charter at least a real chance. This, I believe, constitutes a fitting objective for the next quarter century. Humanity deserves no less than that.

Accept, Your Holiness, the reiteration of my warmest respect and highest consideration.

THE TRADE BILL OF 1970

Mr. JAVITS. Mr. President, on September 30, Ambassador Carl Gilbert, the President's Special Representative for Trade Negotiations made a major trade speech in Raleigh, N.C., entitled "U.S. Foreign Trade Policy for the 1970's." I do not agree with all the points made by Ambassador Gilbert.

For example, the administration apparently has yielded to support what I consider to be an unreasonable protectionist position for comprehensive textile quotas; without regard to internationally accepted injury criterion with the result that our exporters will face retaliation in foreign markets; but the whole thrust of the position, or its general position is, in my judgment, critically important and entirely correct, aside from the point which I have just made.

Ambassador Gilbert's speech is a balanced analysis of the trade situation and of the trade legislation that has been reported out of the House Ways and Means Committee. Ambassador Gilbert's speech also brings to public scrutiny some badly needed statistical analysis.

Ambassador Gilbert states:

The bill now before the House and introduced in the Senate, on the other hand, is no modest bill. Should it prove impossible to obtain voluntary restraints or waivers of quotas on the $1.6 billion of imports specified in the bill, for example, our imports would be cut back by law by about $500 million. Under the limited authority to pay compensation provided in the bill, this could require us to reduce American tariffs on as much as $2.5 billion of other imports, or to accept comparable retaliation against our vulnerable exporters.

Ambassador Gilbert continues:

Parenthetically, it should be apparent to you that I do not agree with those who today would minimize the possibility of retaliation, should we not choose to pay compensation, on the grounds that other countries need our exports. Should we upset the balance and choose not to right it, a cursory examination of trade statistics will clearly demonstrate that in today's world there are few products others import from us for which they could not find other sources.

These paragraphs clearly pinpoint why a group of Senators of whom I am one, have urged that the trade bill be given considered scrutiny in the Finance Committee. It also explains why we favor a responsible legislative process and believe that special interest legislation such as the trade bill should not be attached to social security legislation of overriding concern to millions and millions of Americans, many of whom, such as the elderly,

are those who have been most hurt by the ruinous inflation of the past years.

These figures indicate further that talk of a "trade war" clearly is not exaggeration.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of Ambassador Gilbert's speech.

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

U.S. FOREIGN TRADE POLICIES FOR THE 1970'S

The subject you have assigned me this morning—U.S. Foreign Trade Policy for the 70s—is frankly a little broader than I can handle. If I were to pretend I could foresee all of the challenges and all of the problems ahead of us during the coming decade, I would be deceiving you. If I were further to pretend that I knew all of the answers to meet the challenges and to solve the problems, then you would have every reason to run me out of town.

To make the next half hour somewhat more meaningful for you, and certainly more honest for me, I would like to steer a somewhat more modest course. I want primarily to talk of some immediate issues in our trade policy, issues which we must soon face and on which much of what will ensue in the coming decade may well depend. In the immediate weeks ahead we face choices of major consequence, choices which in themselves will go far toward shaping and determining both the longer-run trade problems of the remaining years of the decade and our options for meeting those problems.

They will be choices, moreover, which sooner or later will manage to affect the lives and livelihood of the vast bulk of our citizens, many if not all of our major industries, most of our Nation's farm economy, and certainly all American consumers. I am sure most of you realize by now that I refer to the decisions looming ahead for both the Congress and the Administration with regard to the Trade Act of 1970, a bill recently emerged from prolonged hearings and debate by the Ways and Means Committee and now ready for consideration in both the House and the Senate.

I do not intend to discuss the details of this complex legislation with you—it would consume most of your time today to cover them all. Nor would it be at all profitable to attempt to predict at this point the eventual nature and form of the final bill which may emerge from the Congress and be placed before the President for his approval or disapproval. It still has a long way to go and your crystal ball is probably as good as mine.

What I would like to do is spend a few minutes reviewing the path that has brought us to this crucial point in the Fall of 1970, some of the precepts we have followed thus far and what they have brought to both Americans and other citizens of the world, what our stakes are in world trade, and what our stakes are in the new trade legislation.

In developing this latter point, I want to focus primarily upon the stakes you as citizens of North Carolina have in it and on the many, often diverse interests you have in the future of U.S. trade policy. For, in the most literal sense, it is you who will be making this decision, through your elected representatives in Washington. The thought and the methods by which you determine what is in your interest in the decade ahead are no different than—and, indeed, are an integral part of—an identical process which must soon come to a head on a nationwide scale in Washington determining the interest of all 200 million of us in foreign trade.

Looking back over the path we have followed to reach this point in the Fall of 1970, I am reminded of a story told of my close friend, Christian A. Herter. In 1963, just after he had been named the President's first Special Representative for Trade Negotiations, a newspaperman said to him, "it is almost as dreary to read about tariffs as it is to write about them." Yet, the correspondent went on to say, "tariffs may well be the most vital diplomatic subject now facing the western world." As an aside, today he might have added "domestic subject" as well.

Showing his colors as a negotiator, Chris was quick to figure out that the writer could not be correct on both counts. So, in reply, he pointed out that a subject that becomes vital quickly tends to shake off its dreariness for, as Samuel Johnson noted, "'tis wonderous how the sight of the gallows concentrates the mind."

I am sure that you have been reading more, probably much more about tariffs and trade in your local press in recent months than in many years. Many of you may have also observed that "the gallows" means different things to different people. A week ago you may have noted, for example, that 71 economists in your State saw the shadow of the gallows in the probable effects of the provisions of the House Committee's trade Bill. They joined in a declaration with over 4,000 other economists across the country in urging the enactment, instead, of the Administration's own trade Bill "as the barest minimum to continue the nation's avowed freer trade policy in meaningful form." Among the North Carolina signatories were 10 economists from the private sector, plus signers from 11 of your distinguished colleges and universities.

As a lawyer-businessman now turned bureaucrat, I don't mean to imply to you that the economists among us have any monopoly on either common sense or sound judgment. But in this case, there is a haunting note about this appeal not handily passed by. I am sure that what worried some of the economists is the possibility that this current trade bill could emerge from the legislative process with an effect similar to that of the Smoot-Hawley tariff bill which over 1,000 economists 40 years ago petitioned President Hoover to veto. Such a feeling of concern in the professional economic community leads one to take a look back in the record of what followed Smoot-Hawley, being mindful of the dictum of the philosopher, George Santayana, that "those who cannot remember the past are condemned to repeat it."

I think most students of history today would agree that the economists of 1930 had something when they warned that the bill, if enacted, "would inevitably provoke other countries to pay us back in kind." Once the United States enacted it into law, you may recall that it set in motion a chain of reactions by countries throughout the world. The United Kingdom, for example, passed the Emergency Tariff Act of 1931, later, the Import Duties Act of 1932, and then went on to conclude discriminatory and preferential trade arrangements with the Commonwealth countries.

Those of us who are getting white on top also remember that before the Great Depression finally receded, Europe was, so to speak, strewn with the corpses of collapsed economic conferences. We further recall that by 1932, U.S. exports to Great Britain had fallen two-thirds in three years, those to Canada by three-fourths. Over the same period, the value of our wheat exports fell 92 percent and automobile exports 90 percent. Obviously not all of these dire results can be traced to Smoot-Hawley.

Since World War II, on the other hand, we have steadily moved in the opposite direction. Largely under American leadership, barriers to world trade have substantially been reduced. Total world exports now stand at about 12 times the level of the immediate prewar years of 1937–38. Last year alone, they increased 14 percent from $240 billion to $270 billion.

In our own country during the last 25 years the broad upsweep of our own economy has been characterized by increased employment, increased production and increased levels of personal consumption and well-being. During the last two decades, during which our GNP more than doubled, our foreign trade has more than tripled. These years in which our foreign trade—imports as well as exports—flourished, were also years of unparalleled prosperity for the American people.

In 1970 our exports are running at an annual rate of $43 billion, a healthy 15 percent increase over the performance of a year ago, and continuing the steady rate of growth characteristic of recent years. While a precise translation is difficult to make, 1969's lower export volume probably translated into the jobs, often jobs in our better paying industries, of some 2.7 million persons.

I did not come here, however, to act the role of a Pollyanna. There are at least two significant disclaimers which must be kept in mind. The growth of world trade and the economic development it has encouraged virtually everywhere have also brought increased competitive conditions and capabilities, often in industries and products where, especially in the immediate postwar years, we formerly felt little or no competitive pressures from abroad.

These increasing pressures were seriously magnified and exacerbated in recent years by the strong inflationary winds which swept our economy. Domestic business was good, often too good, so that with prices rising domestic markets were satisfied first. On the other hand, with costs also rising both our price competitiveness in export markets suffered and new incentives and advantages were created for imports into our domestic market.

The results, as I am sure everyone in this room well knows, have been a rapid increase in imports, often sharp penetration of our market, until the last year or so a decline in our traditional trade surplus, and overall, rising clamor for greater protection by a wide range of American industry from foreign competition. Our legislators in Washington and, I can say this from intense personal experience, your national Administration have both been under great pressure to stem the flow of foreign goods, and to drastically modify the policies we have long followed on a bipartisan basis through successive Administrations of both Parties.

This movement for a "new" trade policy now finds its expression in the trade Bill reported by the Ways and Means Committee last month, a bill providing statutory authority for a variety of quotas—the form of protection away from which the world has been steadily moving since the dark days of the 1930s—and for a greatly enlarged escape-clause hatch for relief from import pressures. Under some circumstances, moreover, it provides recourse to virtually arithmetic determinations of the condition of import injury.

My second disclaimer must be that in no sense do I want to leave you with the impression either that the past is prologue to the future in trade any more than it is in the other affairs of man, or that the future will be always under firm control—disclaimers which seem to become more frequently necessary as the years go by and as the pace and complexity of world affairs never ceases to increase. Some of the problems ahead of us, many with a crying need for solution, are inherited from the past, but greatly complicated with the passage of time. Others undoubtedly can now be made dimly foreseen. Let me merely tick some of them off briefly for you only to suggest the awesome complex ahead.

Before this or most any other audience I would be compelled to put near the top of

any such list the problem of world agriculture, long the neglected child in our progress toward establishing freely flowing trade on an open and competitive basis. Virtually everywhere in the world today domestic policies still intervene in the production and distribution of farm products and, by the same token in varying degrees and with varying devices, domestic considerations intervene in the trade between nations in these products.

As one of the world's most efficient producers, the United States has a great stake in finding new solutions to opening up world markets and to bringing the benefits of efficient operations to consumers everywhere. But, with my good friend Clarence Palmby coming down tomorrow to meet with you, I will not further impinge on this subject, one in which he is eminently qualified to speak to you. When he finishes, I am sure, if you don't know now, you will understand the meaning of the initials, CAP.

For the industrialists of North Carolina, I would add to any list of future problems several which they also share with your farmers. The steady proliferation of preferential trading groups, groups of countries which give favored access in their markets to the products of other group members, is clearly a matter of rising concern. Some of them, particularly those underway or looming in the not-too distant future involving the European Community and a far-flung band of its trading partners, point toward the creation of enormous, preferential trading blocs in which nonmembers could compete only on inferior terms.

Another major concern continuing from the past is the tortoise-like pace of Japan's progress toward liberalization of the network of trade barriers it found necessary during its period of reconstruction. That country, of course, is our best customer for agricultural products, as well as a very good customer for industrial products, and good business sense would suggest we treat it accordingly. But Japan has long since achieved a competitive status in the world market, certainly in our own. It could, without apparent real loss, respond to the repeated demands of the United States and other countries and eliminate all of its remaining restrictions on our and other nations' trade, as well as the needless hindrances and controls it still imposes on foreign investment.

Another area, somewhat greater in its future significance for industry than for agriculture, which gives every promise of also forcing us to take action is the trend toward harmonizing of technical standards for products moving between countries. This movement is well along in electronic components, an export category of no small interest to North Carolina, and there is little doubt that it will soon expand to encompass other product groups. For a country which has long pursued a course of minimal Government intervention, except where public health or safety is involved and the Congress has determined there was no acceptable alternative, the standards systems being developed abroad today will, if we desire to participate and to insure that our own products are not placed at a disadvantage, require in all likelihood new forms of government-industry cooperation and new institutions to act on an international basis.

While I could continue this enumeration for the remainder of my allotted time, I would rather turn now to reviewing the more specific interest of North Carolinians in the trade issue. I should have noted earlier my great pleasure and appreciation for being permitted to participate in a trade conference in a State so intensely involved in expanding foreign trade as is yours. The pioneer efforts of Governor Hodges have, indeed, borne great fruit. Your many overseas trade missions and your participations in exhibitions and trade fairs have also borne fruit in the way of jobs and incomes and other benefits for your citizens. So have your Industrial Development Missions contributed crucially to attracting the many foreign subsidiaries you now have within your borders which provide still additional jobs. For one whose current job description appears to involve the mandate to listen attentively and regularly to the charge that America can no longer compete in the world of commerce, it is also a pleasure to visit a State which ranks 10th in exporting. Or one which can boast of supporting a State Agency which has won, not one, but two "E" awards for its success in promoting exports.

I know, of course, that this interest and this success is not exactly a new phenomenon around these parts. International trade has always been important to American agriculture and few know that better than the North Carolina farmer and his ancestors. Tobacco and cotton produced here were being exported from the earliest Colonial times. The record built up since then has meant much both to the strength and progress of agriculture in your State and to your general prosperity and growth. But, again, with John Palmer coming to this platform later this week, there is little need for me to elaborate, certainly not about your stake in expanding your trade in tobacco.

Speaking about the United States as a whole, our agricultural trade experienced two years of decline—in the fiscal years 1968 and 1969. But I am pleased, and I know you are, at the revival that we have experienced during the past year.

In the year that ended last June 30, our total U.S. farm exports rose 16 percent—reaching more than $6.6 billion, the third highest on record. Even more important is the fact that commercial exports for dollars totaled $5.7 billion—and that was an all-time record.

Exports of almost all major U.S. farm products were up, and to me it is a striking fact that the majority of the increase came in soybeans and their products and in feedgrains. These are bulk commodities that move, for the most part, in an atmosphere of liberal trade.

U.S. soybeans move freely into the European Community, since they are bound duty-free under GATT. We also have good soybean access to several other important markets—including the United Kingdom and Japan. Because of these facts, U.S. soybean farmers were benefited by over a billion and a half dollars in foreign sales in fiscal 1970.

U.S. feedgrain exports to the European Community were down in the past year—because they are affected by the EC's variable levy system. But this decline was more than offset by shipments to other countries—particularly Japan, where corn and grain sorghum have unrestricted, duty-free access as animal feeds. For the year, U.S. feedgrain exports were at a level of $995 million—compared with $775 million in the preceding year.

Exports of wheat and flour, livestock and products, and fruits, nuts and vegetables also showed increases. Exports of U.S. tobacco increased to $540 million in fiscal 1970.

It is an understatement to tell you that American farmers have a large stake in foreign markets. No less than one-fifth of all the crop land harvested in the United States produces for export. That includes about half our production of wheat and rice; around two-fifths of the soybeans; cattle hides, hops, tallow, tobacco, and flaxseed; about one-fourth of the cotton, and one-sixth of the farm sales of corn.

Last year North Carolina's nearly 300,000 farmers had a major part in the Nation's export performance—scoring fifth among all States in total exports. The leading farm export states were Illinois, California, Iowa, and Texas, in that order. Only North Carolina among the Eastern States ranked among the top five.

I wish I could as easily summarize the record on the industrial side—for it is no less impressive nor any less pervasive. But, unfortunately, as you probably know, the product diversity and our methods of collecting data on industrial activity do not permit as much precision as in agriculture. We do know that as far back as 1966 you were 13th in the Nation in value of your manufactured exports. It is a good guess that your rapid growth and exceptional promotional efforts since then have moved you even further up the ladder. You then also ranked first among all states in overseas sales of textile-mill products and of furniture and fixtures. Nonelectrical machinery, electrical machinery, and paper and paper products were also major export business for you—and, in turn, important sources of jobs, incomes, and profits. With the growth of the chemical industry since then, I am sure you have turned in a good record in this, one of our best competitor industries in world markets.

But, like other parts of the Nation, you also have encountered some real problems in trade. I am sure everyone in this room is aware of the special and persistent problems, for example, that the textile and related apparel industries have had with foreign competition in recent years. I would hope, too, that no one here is unaware of the special and all-out efforts this Administration has been making to alleviate the problems of these industries. For a year and a half now it has sought to reach voluntary agreements with some of the principal foreign sources of pressures on our textile-apparel industries and to restrain the rising volume of imports. It went all the way to seek an acceptable solution to the problems of these major industries and their many employees, 350,000 of whom reside in North Carolina.

Thus far, this effort has been unsuccessful and the Administration reluctantly *but unreservedly* supported the alternative solution of legislation authorizing mandatory quotas on textiles and apparel should further efforts at voluntary solutions still prove elusive and where imports are disrupting our domestic market. Such legislation was incorporated by the Ways and Means Committee, along with other new provisions beyond those supported by the President, in the Bill it sent to the floor of the House.

I can assure you that the decision to go for legislated quotas on textiles was not an easy decision to make. Let me expand this point, first in terms of the international aspects and then in terms of some possible domestic consequences, including consequences for North Carolina where, I suggest, your far-flung, diverse interests and stakes in foreign trade today are a mirror image of those which also exist at the national level.

World trade today is conducted under a set of rules of behavior consisting essentially of the rights we have obtained from past trade agreements to access to the markets of others, the obligations we have incurred in exchange to permit entry into our own market, and the principles we and our trading partners abroad have agreed to follow. Since we have long bargained on the basis of reciprocity, these rights and obligations today are approximately in balance. Any abrogation or suspension of those obligations by any nation necessarily upsets this balance unless the other parties choose to waive their rights.

When any party concludes that circumstances have changed and its past commitments can no longer be honored on, for instance, a certain line of products because of current adverse impact from imports, the balance is altered and the country thereby incurs a further obligation to restore the balance. This can be done either by providing equivalent, new concession involving

other products of interest to countries affected or by permitting them, in turn, to raise new trade barriers. In short, either increased imports of other products must be permitted or reduced opportunities for exports accepted.

Put in this way, I hope you can see why any such decision is necessarily taken only after careful consideration. It inherently involves a balancing of our many national interests and a balancing of many imponderables and uncertainties. Only time can tell what all the costs and the benefits may be, let alone how they will net out or, on balance, serve the entire national interest.

A balance between diverse interests, of course, is involved in virtually any legislative or administrative issue of public policy. Whether it be at the local, the State, or the National level, it involves an assessment and a judgment between conflicting interests, a weighing of the special pleas of some against the often less vocal but more general interests of others. This, I would guess they would say, is, if any reason exists, what those of us in public life are paid for.

While trade policy decisions are essentially national decisions because they have the capability of affecting all of us, certainly all of us in our relations with others abroad. I would suggest to you that they are properly also State decisions as well. Even in a single State such as North Carolina, the balancing of interests and choosing a course of action in the field of trade would not be a simple problem.

If voluntary solutions to the textile problem should prove unattainable under the proposed legislation, for example, North Carolinians with export interests may find overseas markets no longer so profitable, or others of your producers and their workers may find a rising tempo of new import competition. Should such eventualities materialize, I would hope we can count on your textile spokesmen to explain and defend our efforts on their behalf to their neighbors and colleagues, I would also suggest in all humility and candor that in the future, your own interests as well as our total national interest will be best served when issues such as these arise if you can look at all of their aspects from the point of view of what is good for North Carolina and tell us in Washington what you decide. I, for one, would welcome the results of your assessment.

Before I leave this note, I can't resist the temptation for one further remark. If I were Governor Scott, not only would I be enjoying more of the fair weather of a North Carolinian Autumn, but I would also be thanking the Lord that headaches such as these were, in the infinite wisdom of the Founding Fathers, required by the Constitution to be endured by the Federal Government, and not by the States. I know you have heavy enough burdens now, Governor; I would not want to add to your problems.

Before I close, let me return briefly to the Trade Bill now before the Congress. I do not want to leave you with the slightest suspicion that all is well in trade. We do have problems, we do need new legislation, and we must continue to exercise aggressive vigilance in pursuit of our interests. The Trade Bill proposed by the President was the product of a long and thorough reassessment of our needs, of the defects of the present statutes, and of the tools we need while we await the development of the long-term program now being formulated by the Presidential Commission on Trade and Investment.

The legislation proposed by the President would have carefully but satisfactorily liberalized the escape clause provision to permit relief from excessive foreign competition when serious injury or the threat thereof was proven to an entire industry. It would have similarly moderated the tests which proved to be too severe and which have prevented individual firms and workers from obtaining necessary adjustment assistance in the face of import pressures. It also provided for an overdue form of tax incentive to our exporters and for a variety of encouragements to our efforts to attack the remaining barriers to trade. And, as I mentioned earlier, to his original proposals the President last June added his support for quotas on textiles and apparel as the alternative to a voluntary restraint solution. Altogether, it is a modest Bill, designed to meet the most pressing of our trade problems and the trade problems of North Carolina as well.

The Bill now before the House and introduced in the Senate, on the other hand, is no modest bill. Should it prove impossible to obtain voluntary restraints or waivers of quotas on the $1.6 billion of imports specified in the Bill, for example, our imports would be cut back by law by about $500 million. Under the limited authority to pay compensation provided in the Bill, this could require us to reduce American tariffs on as much as $2.5 billion of other imports, or to accept comparable retaliation against our vulnerable exporters.

Parenthetically, it should be apparent to you that I do not agree with those who today would minimize the possibility of retaliation, should we not choose to pay compensation, on the grounds that other countries need our exports. Should we upset the balance and choose not to right it, a cursory examination of trade statistics will clearly demonstrate that in today's world there are few products others import from us for which they could not find other sources.

The potential disruption of present trade and the possible consequences for other American traders portended by the present Bill do not stop there. Rejecting the President's proposals to make a measured liberalization of the escape clause, the Bill would substitute still looser tests of eligibility for industry relief. It also heavily tips the scales of relief options in the direction of quotas instead of higher tariffs. And it sets into law what, in effect, amounts to an additional presumption that certain arithmetic measurements of import impact are of unique significance, if not to be taken as the definition of serious injury and, hence, to trigger relief.

The likely coverage of these complex provisions is virtually impossible to measure. For one thing, no reliable data exist to test the present situation of many industries in relation to the new arithmetic standards. Some of the other standards, both qualitative and quantitative, are also without statistical support. The new judgmental factors can certainly not be assessed. The train of events to follow enactment of the Bill could well be such that the tariff reduction authority provided in the Bill might prove to be inadequate for compensation purposes; we could not reduce enough existing tariffs on other American products to compensate. The balance would have to be restored in other ways.

Equally important, as a leader in world trade we should in all sober expectations have to assume that other countries would be sorely tempted to emulate us. Any new American standard suggesting some sort of ceiling on imports at 15 per cent of our market for given products would begin to show up in a variety of versions abroad. Our better export performers would then surely become vulnerable to counteraction by the application of parallel restrictions against us.

I should add that what I have been attempting to summarize for you are some *possibilities* and *risks* inherent in the proposed legislation. The basic thrust of the Bill is clear—to make restrictive action more likely, to require a vast number of new Presidential decisions, an equal number of new economic and political pressures, and greater difficulty in striking the balance of national interests I mentioned earlier. No one can know what the results of this legislation would be, but any thinking person should *know* that we would be playing with fire with little ability to control who will be burned or how badly. Surely, we can and we will defend the legitimate interests of American firms and workers without going to such extremes.

Withal, at home and abroad, there will also necessarily be injected into our affairs new uncertainties and new and unstable terms on which business must be conducted—a condition which a former businessman need not tell other businessmen would certainly not be welcome. Even less welcome, I am sure, will be the many new authorities and powers which must inevitably be exercised by an expanded, faceless bureaucracy, powers approximating those of commercial life or death over a broad scope of business activity, both here and abroad.

I put these facts before you today not to argue that the Bill is entirely objectionable. It contains many provisions that are sorely needed. But it does go far beyond the balanced program the Administration recommended, incorporating undesirable and unnecessary new quota and other provisions. Basic decisions by the Administration are still to be made, but it is clear that we will continue to work for the President's original program with the addition of the present Bill's textile provisions. Such a Bill would be in our national interest and in the interest of the State of North Carolina.

BASIC REFORMS IN TREATMENT OF POW'S

Mr. HATFIELD. Mr. President, it has been clear for many months the Communists in North Vietnam have been using American war prisoners as hostages to a political settlement satisfactory to them in Southeast Asia.

Ever since the beginning of the Paris conferences the Communists have been adamantly insistent on discussing the prisoner of war problem as part of the overall settlement in Vietnam. They have insisted it is impossible to discuss it as a separate issue. Indeed, for many months the Communists refused even to consider the problem, or to discuss an exchange of prisoners, because, they said, there are no North Vietnamese fighting in the south.

In September what might be a break in the negotiation developed because, for the first time, the Communists admitted the issue exists and laid a proposal on the table. Their prisoner proposal involves a prior political settlement in Vietnam, whereas our position has been that the problem should be settled separately by a prisoner exchange.

Negotiations continue and there may, perhaps, be a break. Until then, however, our first consideration must be to build world support for at least basic reforms in the manner in which the North Vietnamese have treated our men. These reforms involve forcing the Communists to live up to the Geneva accords on prisoners to which they are a signatory power.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND LAYING BEFORE THE SENATE OF THE UNFINISHED BUSINESS (H.J. RES. 264) TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that tomorrow, following the disposition of the reading of the Journal and any unobjected-to items on the legislative calendar, there be a period for the transaction of routine morning business with statements therein limited to 3 minutes.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the period for the transaction of routine morning business tomorrow the unfinished business, Calendar 1101, House Joint Resolution 264, be laid before the Senate.

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

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

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, and they were signed by the President pro tempore:

S. 1461. An act to amend section 3006A of title 18, United States Code, relating to presentation of defendants who are financially unable to obtain an adequate defense to criminal cases in the courts of the United States;

S. 1708. An act to amend the Land and Water Conservation Fund Act of 1965, as amended, and for other purposes;

S. 2916. An act to establish the Plymouth-Provincetown Celebration Commission;

S. 3014. An act to designate certain lands as wilderness;

S. 3529. An act for the relief of Johnny Mason, Jr., (Johnny Trinidad Mason, Jr.);

H.R. 9654. An act to authorize subsistence, without charge, to certain air evacuation patients;

H.R. 11876. An act to amend section 1482 of title 10, United States Code, to authorize the payment of certain expenses incident to the death of members of the Armed Forces in which no remains are recovered;

H.R. 12870. An act to provide for the establishment of the King Range National Conservation Area in the State of California;

H.R. 13519. An act to declare that the United States holds 19.57 acres of land, more or less, in trust for the Yankton Sioux tribe;

H.R. 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;

H.R. 15112. An act to repeal several obsolete sections of title 10, United States Code, and section 208 of title 37, United States Code;

H.R. 15424. An act to amend the Merchant Marine Act, 1936;

H.R. 15624. An act to convey certain federally owned land to the Cherokee Tribe of Oklahoma;

H.R. 16732. An act to amend title 37, United States Code, to provide that enlisted members of a uniformed service who accept appointments as officers shall not receive less than the pay and allowances to which they were previously entitled by virtue of their enlisted status; and

H.R. 16997. An act for the relief of Colie Lance Johnson, Junior.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON LOAN APPROVAL BY RURAL ELECTRIFICATION ADMINISTRATION

A letter from the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, reporting, pursuant to request in Senate Report No. 497, the approval of a loan to Brazos Electric Power Cooperative, Inc., of Waco, Tex., for the financing of certain transmission facilities; to the Committee on Appropriations.

REPORT OF OFFICE OF CIVIL DEFENSE

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

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A letter from Roger J. Connell, of Cincinnati, Ohio, praying for the enactment of legislation relating to mechanically inferior merchandise; to the Committee on Commerce.

A resolution adopted by Knights of Columbus Supreme Council, New Haven, Conn., praying for the enactment of H.R. 10867, making it a criminal offense to mail any unsolicited obscene material to any home where a minor under 18 years of age resides; to the Committee on Post Office and Civil Service.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD of West Virginia (for Mr. PASTORE), from the Committee on Commerce, with amendments:

S. 1466. A bill to amend the Communications Act of 1934 to provide that certain aliens admitted to the United States for permanent residence shall be eligible to operate amateur radio stations in the United States and to hold licenses for their stations (Rept. No. 91–1319).

By Mr. MAGNUSON, from the Committee on Commerce, without amendment:

H.R. 14678. An act to strengthen the penalties for illegal fishing in the territorial waters and the contiguous fishery zone of the United States, and for other purposes (Rept. No. 91–1320).

By Mr. MAGNUSON, from the Committee on Commerce, with amendments:

H.R. 8298. An act to amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein (Rept. No. 91–1330).

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, without amendment:

S. Res. 470. Resolution authorizing additional expenditures by the Committee on the Judiciary for an investigation of antitrust and monopoly laws (Rept. No. 91–1321);

S. Res. 472. Resolution to provide additional funds for the Committee on Public Works (Rept. No. 91–1322);

S. Res. 473. Resolution authorizing additional funds for the special Committee on Aging (Rept. No. 91–1323);

H. Con. Res. 712. Concurrent resolution authorizing the printing of additional copies of the committee's annual report for the year 1969, House Report Numbered 91–983, 91st Congress, second session (Rept. No. 91–1324);

H. Con. Res. 732. Concurrent resolution providing for the printing as a House document of "The Pledge of Allegiance to the Flag" (Rept. No. 91–1325);

H. Con. Res. 740. Concurrent resolution authorizing the printing of additional copies of the hearings accompanying the Legislative Reorganization Act of 1970 (Rept. No. 91–1326);

H. Con. Res. 748. Concurrent resolution authorizing the printing of additional copies of hearings entitled "Cuba and the Caribbean" for use of the Committee on Foreign Affairs, House of Representatives (Rept. No. 91–1327);

H. Con. Res. 753. Concurrent Resolution authorizing the printing of additional copies of publication entitled "Supplement to Cumulative Index to Publications of the Committee on Un-American Activities 1955 through 1968 (84th through 90th Congresses)" (Rept. No. 91–1328); and

H. Con. Res. 770. Concurrent resolution authorizing the printing of additional copies "Anatomy of a Revolutionary Movement: 'Students for a Democratic Society,'" 91st Congress, second session (Rept. No. 91–1329).

By Mr. HANSEN, from the Committee on Interior and Insular Affairs, with amendments:

S. 1468. A bill to designate the Stratified Primitive Area as a part of the Washakie Wilderness, heretofore known as the South Absaroka Wilderness, Shoshone National Forest, in the State of Wyoming, and for other purposes (Rept. No. 91–1332).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. TYDINGS, from the Committee on the District of Columbia:

DeWitt S. Hyde, of Maryland, to be an associate judge of the District of Columbia Court of General Sessions;

Dyer Justice Taylor, of Virginia, to be an associate judge, District of Columbia Court of General Sessions;

Normalie Holloway Johnson, of the District of Columbia, to be an associate judge, District of Columbia Court of General Sessions;

Leonard Braman, of Maryland, to be an associate judge, District of Columbia Court of General Sessions;

Paul F. McArdle, of Maryland, to be an associate judge of the District of Columbia Court of General Sessions;

Sylvia A. Bacon, of the District of Columbia, to be an associate judge, District of Columbia Court of General Sessions;

John F. Doyle, of Maryland, to be an associate judge, District of Columbia Court of General Sessions;

Eugene N. Hamilton, of Maryland, to be an associate judge, District of Columbia Court of General Sessions;

Stanley S. Harris, of Maryland, to be an associate judge, District of Columbia Court of General Sessions;

Theodore R. Newman, Jr., of the District of Columbia, to be an associate judge, District of Columbia Court of General Sessions;

Nicholas S. Nunzio, of Maryland, to be an associated judge, District of Columbia Court of General Sessions;

John G. Penn, of Maryland, to be an associate judge, District of Columbia Court of General Sessions;

George H. Revercomb, of Virginia, to be associate judge, District of Columbia Court of General Sessions;

William E. Stewart, Jr., of Maryland, to be an associate judge, District of Columbia Court of General Sessions; and

James A. Washington, Jr., of Maryland, to be an associate judge, District of Columbia Court of General Sessions.

By Mr. JACKSON, from the Committee on Interior and Insular Affairs:

Elburt Franklin Osborn, of Pennsylvania, to be Director of the Bureau of Mines.

BILLS INTRODUCED OR REPORTED

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

By Mr. DOLE:

S. 4452. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Iowa Tribe of Kansas and Nebraska and of Oklahoma in Indian Claims Commission docket numbered 79–A, and for other purposes; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. DOLE when he introduced the bill appear below under the appropriate heading.)

By Mr. MONTOYA:

S. 4453. A bill to establish a Department of Science and Technology, and to transfer certain agencies and functions to such Department; to the Committee on Government Operations.

(The remarks of Mr. MONTOYA when he introduced the bill appear below under the appropriate heading.)

By Mr. SCOTT:

S. 4454. A bill to make available Federal assistance to local law enforcement agencies in cases involving the killing of State and local law enforcement officers, firemen, and judicial officers; to the Committee on the Judiciary.

(The remarks of Mr. SCOTT when he introduced the bill appear below under the appropriate heading.)

By Mr. INOUYE:

S. 4455. A bill for the relief of Lt. Col. Lynn Freeman Cowan, U.S. Army Reserve, retired; to the Committee on the Judiciary.

By Mr. HRUSKA:

S. 4456. A bill to amend section 375 of title 28 of the United States Code, relating to the annuities of widows of Supreme Court Justices; to the Committee on the Judiciary.

(The remarks of Mr. HRUSKA when he introduced the bill appear below under the appropriate heading.)

By Mr. BAYH:

S. 4457. A bill for the relief of Kim Hak Kyung; to the Committee on the Judiciary.

By Mr. SCHWEIKER:

S. 4458. A bill for the relief of Dora Leticia Espana and Aura Villeda Espana; to the Committee on the Judiciary.

By Mr. RIBICOFF:

S. 4459. A bill to establish a Council of Consumer Advisers in the Executive Office of the President and to establish an independent Consumer Protection Agency in order to protect and serve the interests of consumers, and for other purposes; to the Committee on Commerce with instructions to report no later than November 23, 1970.

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

S. 4452—INTRODUCTION OF A BILL TO PROVIDE FOR THE PAYMENT OF FUNDS TO THE IOWA INDIAN TRIBE

Mr. DOLE. Mr. President, on May 21, 1969, the Indian Claims Commission granted an award to the Iowa Indian Tribe of Kansas and Nebraska and the Iowa Tribe of Oklahoma. The award was made as payment for certain land which was excluded from the Iowa reservation established in southeast Nebraska and northeast Kansas by an 1854 treaty and as additional payment for other land sold under the same treaty.

Funds to pay this award were appropriated by the Congress on December 26, 1969, and, since that time, the tribes have reached agreement between themselves on the distribution of these funds. Accordingly, I am today introducing legislation to authorize payment of the appropriated sum to the Iowa Tribes.

Mr. President, it stands out as a particularly black mark in an otherwise sorry record of our country's treatment of the great Indian nations that a just and reasonable claim under a formal treaty with the United States should go nearly sixscore years without being satisfied. It would be a further blemish on that record were the Congress not to authorize payment of this claim following a Claims Commission award, congressional appropriation of the necessary funds, and tribal agreement on distribution.

The Iowa reservation in question is located in Brown County, Kans., and Richardson County, Nebr. Its original acreage under the treaty of 1836 was 11,771 acres, but this acreage was reduced to 1,378 acres by the 1854 treaty. This land is now used for farming, 82 percent by Indians and the remainder by non-Indians under lease arrangements.

Membership of the Iowa Tribe of Kansas and Nebraska is currently estimated at 1,521 of whom 265 live on or adjacent to the reservation. The tribe is governed by a general council, composed of all enrolled members over 21 years of age, and an executive committee having broad powers delegated by the general council. The primary functions of the tribal government are in matters pertaining to the prosecution and distribution of claims judgment, preparation of claims judgment, preparation of membership rolls, and supervision of the tribal land assignment program.

The tribal government has proposed distribution of the judgment in question on a per capita basis to currently enrolled members in accordance with the tribal constitution.

There is no controversy surrounding this award, the claims commission has adjudged it, the Iowa tribal governments have agree on the distribution scheme and Congress has appropriated the funds to pay it. I am hopeful that this authorization can be acted upon with all possible speed, so we may see this claim finally settled. After 116 years it is time to act.

I ask unanimous consent that the text of the bill and additional explanatory materials be printed in the RECORD.

The presiding officer (Mr. MUSKIE). The bill will be received and appropriately referred; and, without objection, the bill and materials will be printed in the RECORD.

The bill (S. 4452) to provide for the disposition of funds appropriated to pay a judgment in favor of the Iowa Tribe of Kansas and Nebraska and of Oklahoma in Indian Claims Commission docket numbered 79–A, and for other purposes, introduced by Mr. DOLE, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs and ordered to be printed in the RECORD, as follows:

S. 4452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the funds on deposit in the United States Treasury to the credit of the Iowa Tribes of Kansas and Nebraska and of Oklahoma that were appropriated by the Act of December 26, 1969 (83 Stat. 447), to pay a judgment by the Indian Claims Commission in docket numbered 79–A, and the interest thereon, after payment of attorney fees and other litigation expenses, shall be divided on the basis of 61.29 per centum to the Iowas of Kansas and Nebraska and 38.71 per centum to the Iowas of Oklahoma, and the funds so divided, including interest accruing thereon, may be invested or expended for any purpose that is authorized by the respective tribal governing bodies and approved by the Secretary of the Interior. Any per capita distribution of any part of the funds placed to the credit of the Iowa Tribes of Kansas and Nebraska and of Oklahoma shall be payable only to those persons who meet the membership requirements specified in the respective tribal constitutions, and such per capita payments shall not be subject to Federal or State income tax.

The materials presented by Mr. DOLE is as follows:

RESOLUTION

Whereas, the Iowa Indian Tribe of Kansas and Nebraska is an organized tribe under the Indian Reorganization Act, and

Whereas, the Iowa Nation of Indians has received a judgement fund through a claim filed with the Indian Claims Commission, and

Whereas, there are two Iowa Indian tribes having interest in the claim: The Iowa Indian Tribe of Kansas and Nebraska, and the Iowa Indian Tribe of Oklahoma and it is necessary for each tribe to agree upon an equitable division of these funds, now

Be it therefore resolved, that the members of the Iowa Indian Tribe of Kansas and Nebraska in a duly called general council meeting on July 16, 1966 in Hiawatha, Kansas agree to a division of the judgment fund as follows:

That the funds belonging to the Iowa Nations currently on deposit with the United States Treasury as an award made by the Indian Claims Commission shall be divided on the basis of the total number of members of each Iowa Tribe who received an allotment of land under the Act of 1887, plus subsequent Acts, except that a total number of 28 Iowa Indians of Kansas and Nebraska who were entitled to an allotment but who

did not receive shall be added to the total number receiving allotments with the Iowa Indian Tribe of Kansas and Nebraska. The following is the basis of this agreement:

Iowa Indian Tribe of Kansas and Nebraska

Total number of allottees	143
Number entitled but not allotted	28
Total	171

Iowa Indian Tribe of Oklahoma

Total number of allottees	108

The shares each tribe will be entitled to under this agreement will be:

Iowa Indian Tribe of Kansas and Nebraska, 171/279 or 61.29%.

Iowa Indian Tribe of Oklahoma, 108/279 or 38.71%.

Be it further resolved, that this agreement of a division of Iowa funds in which the Iowa Indian Tribe of Kansas and Nebraska and the Iowa Indian Tribe of Oklahoma have joint interest, will be effective and apply in all future judgments awarded by the Indian Claims Commission or any other agency to the Iowa Nation of Indians which funds are jointly owned by the two tribes mentioned above.

The foregoing resolution was duly adopted by the general council of the Iowa Tribe of Indians of Kansas and Nebraska at its annual meeting held July 16, 1966, at Hiawatha, Kansas, at which a quorum was present, by a vote of 81 for and 23 against.

CECIL R. GREEN,
Chairman, Iowa Indian Tribe of Kansas and Nebraska.

Attest:

GLENN CAMPBELL,
Secretary.

RESOLUTION NO. 2—IOWA TRIBE OF KANSAS AND NEBRASKA, IOWA EXECUTIVE COMMITTEE, MARCH 13, 1970

Whereas, the Iowa Tribe of Kansas and Nebraska is an organized tribe under the Indiana Reorganization Act, and

Whereas, the Iowa Executive Committee has authority to act for the Iowa Tribe under authority of Resolution adopted October 14, 1961, by the General Council, and

Whereas, the Iowa Nation of Indians has received a judgment award in Docket No. 79–A through a claim filed with the Indian Claims Commission, and

Whereas, there are two Iowa Indian tribes having an interest in the claims award: The Iowa Tribe of Kansas and Nebraska, and the Iowa Tribe of Oklahoma, and

Whereas, an agreement between the two tribes on the manner of division of funds in which both tribes have a joint interest was confirmed in 1966 by resolution of both Tribal General Councils, copies of which are attached, and

Whereas, it is the desire of the Iowa Executive Committee to expedite disposition legislation for the benefit of the tribal members of the Iowa Tribe of Kansas and Nebraska;

Now, Therefore, Be It Resolved, that the Iowa Executive Committee hereby authorizes the Chairman, Mr. Forrest Fee, to submit the attached drafts of legislation to Kansas Congressional Delegation members with a request to introduce such legislation on behalf of the Iowa Tribe of Kansas and Nebraska before the Congress of the United States.

CERTIFICATION

The foregoing resolution was duly adopted this 13th day of March 1970 in a special session of the Iowa Executive Committee, at which members of the Committee were present, constituting a quorum, by a vote of 3 for and 0 against.

FORREST FEE,
Chairman, Iowa Executive Committee.
DORIS R. BAILEY,
Secretary, Iowa Executive Committee.

BUREAU OF INDIAN AFFAIRS,
Washington, D.C., February 19, 1970.

To: Area Directors.
Attention: Tribal Operations Officer.
From: Division of Tribal Operations.
Subject: Award to Iowas for tribal lands sold under the 1854 treaty.

The Indian Claims Commission on May 21, 1969, in docket numbered 79–A, granted an award amounting to $1,377,207.27 to the petitioners, the Iowa Tribe of the Iowa Reservation in Oklahoma and the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska. The award represents payment for 4,798 acres of land in southeastern Nebraska excluded and from the Iowa Reservation as described in the Treaty of May 17, 1854, and additional payment for 94,451.25 acres of land in northeastern Kansas sold under the same 1854 treaty.

The Commission had previously determined on February 17, 1969, that as of June 16, 1857, the 4,798 acres had a value of $14,394.00 ($3.00 per acre) and the 94,451.25 acres had a value of $377,805.10 ($4.00 per acre). The sum of $184,466.85 had been realized from public sale of the land leaving the petitioners entitled to the difference of $193,358.15 ($377.805.00—$184,446.85). Offsets were waived in this case, with the right to claim them in other pending Iowa cases.

As the 1854 treaty provided for investment of the proceeds from the sale of the Iowas' lands, the Commission held that the petitioners were entitled to simple interest on $207,752.15 ($193,358.15 + $14,394.00) at the rate of five percent beginning June 16, 1857, the date of completion of the lands sales to the date of payment.

Funds to cover the award were appropriated on December 26, 1969 (83 Stat. 447). January 16, 1970, when the funds were credited to the Iowas, was the date of payment. The interest on the $207,752.15 to January 16, 1970, amounted to $1,169,455.12.

JOHN D. PARKER,
Acting, Chief, Tribal Claims Section, Division of Tribal Operations.

S. 4453—INTRODUCTION OF THE DEPARTMENT OF SCIENCE AND TECHNOLOGY ACT OF 1970

Mr. MONTOYA. Mr. President, today I am introducing a bill to create a long-needed Department of Science and Technology. The need for such a reorganization of science affairs is becoming more evident daily. The research effort of this great country is rapidly slipping, and the potential benefits this work would bring are being left in the untapped imaginations of the men who are not allowed to follow the trail of scientific inquiry because of the lack of funds for their projects.

My bill would cause an extensive reshuffling of science in the Federal Government. This is without a doubt the most comprehensive bill ever introduced for the purpose of creating a Department of Science and Technology. It would bring under one cover virtually all of the research, development, evaluation, and testing conducted by the Federal Government's own agencies.

The National Science Foundation, Atomic Energy Commission, and the National Aeronautics and Space Administration are transferred in whole to the new department, along with "functions of all departments and agencies of Government as the President determines relate primarily to research, development, testing, or evaluation—section 8(a). The Director of the Office of Management and Budget will assist the President in the determination of the various personnel and property to be transferred. This determination will be aided by the fact that the Office of Management and Budget, in conjunction with the Office of Science and Technology, has developed detailed knowledge of the operations of the Federal Government that fall into this research, development, test, and evaluation categories. This has been a necessary part of the presentation of a research and development budget in the special analyses of the Federal budget presented annually as a companion to the President's budget, and should be a useful guideline in the reorganization provided for in this bill.

The bill also provides for the development of a national science plan. The need for this provision has become obvious. During the early 1960's, science seemed to fare well enough under the complicated, informal, and often obscure relationships that developed among the President's Science Advisory Committee, The Office of Science and Technology, the Federal Council for Science and Technology, and the National Academy of Sciences. The President's Science Adviser served as the liaison between the President and these various organizations and held a crucial role in the development of science in the Federal Government. The weakness of this arrangement has now become painfully apparent to the entire research community at all levels—academic, governmental, and industrial. D. S. Greenberg, a reporter for Science magazine who has been working in Europe, has recently returned to this country and has observed the striking decline of science affairs here. His comments are worth quoting at length:

> The difference under Nixon, of course, is that, despite a few cordial words now and then, there is little to suggest that the President accords scientific activity any special or privileged role in national life, and there is a good deal to suggest that the President, as well as many of his closest advisers, regard the scientific community as having succeeded in making unwarranted claims on national resources and political sympathy.

The best way for science to grow and maintain a stable base is to give it a solid organizational structure in the Federal Government. When the top man for science affairs in the Federal Government is an adviser who can be phased in or out easily, then science can be treated the same way. Science needs a coherent, organized base. It needs its own Cabinet-level department.

Science and technology also need a reordering of priorities. Under the Department I am proposing, the needs for new weapon systems in the Department of Defense would be measured against the needs for medical research, housing research, and all other scientific activities. All research financed by the Federal Government would come through this Department of Science and Technology, and could be allocated in a much more rational fashion than is done under the

present chaotic organization. This is particularly important to accomplish during a period of contraction in the scientific community. If some central organization does not examine the priorities for scientific research, we may do irreparable damage to science in this country. In fact, that is just what is happening today. Budgets are being reduced, and the cuts often come from projects that do not have the protection a Department of Science and Technology could give them. Those projects with strong organizations to defend them often suffer less, even if they are not as justifiable. This is simply not the way this country should determine something as vital as the future of its scientific and technological well-being.

The impact of the present erratic pattern of science funding is particularly apparent in my home State of New Mexico. New Mexico has a large scientific community. The ratio of scientists and engineers to total population is the highest of any State in the Union. The economy of New Mexico is therefore geared primarily to science and technology, and any cutback directly affects the well-being of New Mexico's economy. New Mexico was chosen during and shortly after World War II as the site to locate many of the Nation's top research and development programs. The reason for selecting New Mexico was the isolation of the area, the availability of Government-owned land, and an excellent climate and geography conducive to scientific creativity. Many millions of dollars were invested by the Federal Government in constructing permanent facilities at Los Alamos, Sandia Base, Kirtland, Las Cruces—Apollo—White Sands, and Holloman. In reality, the total value of the Government investment would go into billions of dollars.

The needed scientific community relocated to the State of New Mexico from all over the Nation and made careers of valuable national contribution and formed a solid economy for New Mexico. The change in emphasis from space, defense, and atomic energy, to the domestic needs of the Nation is something that is now drastically needed, and the facilities and personnel located in the State of New Mexico should be reprogramed to accomplish these domestic needs, and not disbanded and dismantled. If the current administration continues to deemphasize science and technology the State of New Mexico will suffer a sharp setback in its basic economy and conversion to another economic base will take many years. This is neither advantageous to science and technology, the scientific community, the future of the Nation, nor the future of the State of New Mexico.

The State of New Mexico was the birthplace of atomic energy, modern missile and rocketry, and the beginning of the space program. The people of the government of the State of New Mexico welcomed and cooperated with the Federal Government in accommodating the wishes of the Federal Government to conduct large-scale programs in science and technology in the State for the past quarter century. This endeavor was, of course, mutually beneficial to both the State of New Mexico and the Federal Government. In many cases, however, personal sacrifice on use of available land to ranchers, farmers, and recreational facility promoters was encountered to accommodate the desires of the Federal Government. The loss of Federal programs in the State after so long a period of investment and successful operation harms in a marked way the very people who supported Federal science and technology in its early days.

Five State-supported universities in New Mexico are actively engaged in several programs that are federally supported in accomplishing the R. & D. programs of the Nation. These universities have made national contribution in the past to the Nation's advancing technology. These universities have produced many outstanding scientists and engineers over the past 25 years and have made a remarkable contribution to the accomplishment of the science and technology goals of the Nation. The increase in enrollment in the sciences and engineering in these universities leveled off some time ago and now is sharply declining. It appears that it is no longer attractive for young people to enter into science and technology careers if the current administration projects a dismal future. Thus the institutions of higher learning supported by the State of New Mexico which have contributed so much to the Federal activity are now faced with a sharp decline in science involvement, scientific activity, and facility over expansion.

The attempt to create a Department of Science and Technology has a long history. I think that it is time for Congress to give a positive answer to the question of reorganization. The history of the efforts to create such a Department, along with clear and persuasive arguments, have been summarized by Herbert Roback, and I close my remarks on this subject with a request that this article be printed at the end of my comments in the CONGRESSIONAL RECORD.

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

The bill (S. 4453) to establish a Department of Science and Technology, and to transfer certain agencies and functions to such Department, introduced by Mr. MONTOYA, was received, read twice by its title, and referred to the Committee on Government Operations.

The article, presented by Mr. MONTOYA, is as follows:

DO WE NEED A DEPARTMENT OF SCIENCE AND TECHNOLOGY?

(By Herbert Roback)

Departmental status for science in government is not a novel idea. It was broached 85 years ago by a committee of the National Academy of Sciences reporting on the organization of government science bureaus. The committee was appointed in 1884 at the behest of a member of the National Academy, Theodore Lyman, who was also by unique coincidence a member of Congress. The scientist-congressman, whose National Academy standing was gained by his researches on the Ophiurida, was instrumental in placing a rider on a sundry civil appropriation bill which set up a joint congressional committee (called a commission) to study the organization of the government science agencies (1). This was a compromise measure, Lyman told his House colleagues in urging its acceptance, his main concern being to save the Coast and Geodetic Survey from takeover by the Navy (2). Apparent duplication between the Coast Survey and the Navy's Hydrographic Office in charting coastal waters had led the Navy to espouse merger, a proposal which had considerable appeal in the 48th Congress. The legislative rider directed an investigation of the activities and interrelationships of the Coast and Geodetic Survey, the Hydrographic Office of the Navy, the Geological Survey, and the Signal (Weather) Service. The National Academy committee, enlisted by Lyman, gave technical support to the congressional commission.

Men of science were leery then, as they are now, of military dominance in scientific enterprises. Many of them argued that science agencies should be taken from, rather than placed in, the military departments. For example, they wanted the Naval Observatory to be a national observatory, and the weather service to be removed from the Army Signal Corps. At the same time, they recognized that better coordination of the government's scientific work was needed, and various proposals were made toward that end. The aforementioned report of the National Academy committee crystallized the issues. This group was convinced that the science agencies should be pulled together "under one central authority," but the particular form of organization they left to the future and to Congress. Then the committee ventured this cautious but significant observation (3):

The best form would be, perhaps, the establishment of a Department of Science, the head of which should be an administrator familiar with scientific affairs, but not necessarily an investigator in any specific branch. Your committee states only the general sentiment and wish of men of science, when it says that its members believe the time is near when the country will demand the institution of a branch of the executive Government devoted especially to the direction and control of all the purely scientific work of the Government.

The NAS committee went on to say that, if public opinion was not yet ready to accept a Department of Science, the next best step would be to move the several scientific bureaus into one of the existing departments. Even then coordination would not be automatically insured, in the committee's view, and so they recommended the "organization of a permanent commission to prescribe the general policy for each of these bureaus." The commission would "examine, improve, and approve" plans of work and expenditures and recommend efficiency measures but abstain from administrative involvement. This would be a nine-member commission composed of scientists drawn from government and private life (4).

END OF AN IDEA

The congressional commission, reporting in 1886, gave short shrift to the suggestions both for a Department of Science and a supervisory commission. A new department was held not justified by the degree of duplication in existing scientific agencies; a coordinating policy group was deemed impracticable because department heads could not very well relinquish to subordinates and outsiders their responsibilities for general direction and control (5). With this dismissal by an agency of the Congress, the Department of Science idea died aborning, though it was actively debated at the time in scientific circles (6). In the ensuing decades not much was heard about it. Proposals for govern-

ment departments were made in the fields of health, education, labor, industry, commerce, and agriculture, separately or in various combinations, and three cabinet departments (Agriculture, Commerce, Labor) were established between 1885 and 1945. Not until 1946 was the Department of Science idea revived, at least in the legislative halls. Clare Booth Luce, then a Representative from Connecticut, introduced a bill (H.R. 5332, 79th Congress) to create a Department of Science and Research, stressing the need for national self-preservation in the atomic age and the importance of attracting young people to science careers. Mrs. Luce said: "Only the prestige which attaches to a regular member of the cabinet will render the findings of any scientific body of sufficient weight to command the constant attention of the highest officials of the Government in the consideration and formulation of policy" (7). The bill was pigeon-holed by a House committee.

Vannevar Bush was working for the establishment of an independent agency, which he called the National Research Foundation, to sponsor research of military as well as civilian interest (8). He proposed that it be governed by a director and part-time board of nongovernment scientists. A separate group of nongovernment scientists, which he called a Science Advisory Board, would coordinate the work of government science agencies. These proposals, outlined in Bush's 1945 report to President Truman, "Science—the Endless Frontier," were modified in legislative measures to become a National Science Foundation. The bill which the Congress passed was vetoed in July 1947 by President Truman, who objected to control of government science policy by an outside board (9). The criticisms were reminiscent, in some respects, of those heard in 1884–5 to the National Academy committee's proposal for a science policy commission which would include outside as well as government scientists.

The Bush report was followed in 1947 by the Steelman report, "Science and Public Policy," which went over much of the same ground but with closer orientation to the routines of governmental administration. The Steelman report called for a National Science Foundation to be organized "on sound lines" and suggested that the agency be located in the Executive Office of the President until other federal programs in support of higher education were established, after which time consideration could be given to grouping all such activities, including the National Science Foundation, in a single agency. The Steelman report also favored a part-time governing board for the NSF, but government as well as outside scientists were to be included. It also recommended the creation of an interdepartmental committee on scientific research and development, a special unit in the Bureau of the Budget to review government science programs, and a member of the White House staff to be designated by the President for purposes of scientific liaison (*10*). The Steelman report eschewed any radical departure from the existing framework, presumably meaning that a Department of Science was not in the cards. Three years elapsed, however, before the differences in the several approaches to a National Science Foundation were compromised and a bill finally enacted into law (*11*).

LEGISLATIVE RENEWAL

Sputnik generated a new debate on departmental status for science in the Congress led by Senator Hubert H. Humphrey. On 27 January 1958 a broad-based bill, S. 3126, was jointly introduced by Senators Humphrey, McClellan, and Yarborough to create a Department of Science and Technology which would coordinate and improve federal functions relating to the gathering, retrieval, and dissemination of scientific information; provide educational loans to students in certain science fields; establish national institutes of scientific research; and establish cooperative programs abroad for collecting, translating, and distributing scientific and technological information. A day later Senator Kefauver introduced S. 3180 to create a Department of Science. Both bills were referred to the Committee on Government Operations.

Jurisdictional questions were raised, presumably because the bills went beyond organizatonal matters into policy, and at the request of Senator Lyndon B. Johnson, they were referred anew to his Senate Special Committee on Space and Astronautics, which had been created to consider the government's response to the Russian triumph in space. Without these bills, the Committee on Government Operations was unable to hold hearings in the 85th Congress on the proposal to establish a Department of Science and Technology, which was incorporated in Title I of the bill, but it directed its committee staff to maintain a continuing study of that area. The Humphrey subcommittee did manage, after an agreement reached with Senator Johnson, to hold some hearings in May–June 1958 on a limited aspect of Title I, the proposal for a scientific information center (*12*).

To narrow the jurisdictional issue and regain control of the organizational aspect, the sponsors of the Humphrey bill, now reinforced by Senators Ervin, Gruening, and Muskie, split off Title I and introduced it, with certain revisions, as S. 676 in the 86th Congress. It proposed a transfer to the new department of the National Science Foundation, Atomic Energy Commission, National Aeronautics and Space Administration, National Bureau of Standards, and certain activities of the Smithsonian Institution. By then the impetus for a new department was considerably diminished by NASA's presence. The thrust of science organization was less to coordinate and align than to reach out and do, for Sputnik had caused hurt pride and fear in the nation. It was difficult to make a case for legislating a new department to absorb NASA when the ink was hardly dry on the President's signature to the National Aeronautics and Space Act (*13*).

Indeed, the rush of legislative events and the flurry of organization activity in the executive branch during 1958 outpaced the committee's deliberations on the suitable form of a bill. The Congress created along with NASA an Aeronautics and Space Council and a standing committee in each house to monitor space and related activities. The Defense Education Act gave support to science education and facilities. A reorganization act for the Department of Defense established a Directorate for Defense Research and Engineering. The Advanced Research Projects Agency, previously established as the military's own response to Sputnik, was made an adjunct of the new directorate. The President acquired a Special Assistant for Science and Technology and gave White House status to the Science Advisory Committee. The Federal Council for Science and Technology replaced a looser interdepartmental committee of similar function. Science advisers were assigned to both the Secretary of State and the Secretary General of NATO. A NATO science committee signified the outward reach of science for defense, while "Atoms for Peace" and the International Geophysical Year represented a peaceful gesture to a world community of science. "Altogether," as James R. Killian, Jr., said before the AAAS in summing up government science for 1958, "the year brought an impressive array of organizational innovations for the management of government programs in science and technology and for the provision of scientific advice at policy-making levels" (*14*).

EXECUTIVE OPPOSITION

The spokesmen for science at the Presidential level made plain their distaste for a Department of Science and Technology. Killian, speaking at the AAAS meeting as the President's Assistant for Science and Technology, took pains to quote from Don K. Price's 1954 study: "In the organization of the Government for the support of science we do not need to put all of science into a single agency; on the contrary, we need to see that it is infused into the program of every department and every bureau" (15). The President's Science Advisory Committee in its new eminence regarded a Federal Council for Science and Technology as the instrument for achieving coordination and cooperation among government science agencies. A single department, in PSAC's collective view, would not be able satisfactorily to administer either the mission-oriented scientific and technical functions of existing departments or the "unique" specialized programs of AEC, NASA, and NSF. This seemed to be the prevailing sentiment among scientists though there were notable exceptions. Lloyd V. Berkner would settle for a department excluding the three aforementioned independent agencies; Wallace R. Brode would combine them with a host of others, including the National Institutes of Health, in a Department of Science and Technology (16).

Perhaps the strongest argument from a practical standpoint against immediate legislative action—that the President had not recommended a new department—was made by Representative John W. McCormack as chairman of the House Select Committee on Astronautics and Space Exploration. He wrote to Senator Humphrey in 1958 (17):

"While I believe there should be a Department of Science, I feel that until whoever is President either recommends the establishment of such a Department or would not object to such a Department being established, it would be unwise to force such a Department upon them. I want you to know that I am strongly in favor of a Department of Science being established and, in my opinion, it is only a matter of time that one will be established."

In March 1959 in a review of the state of science affairs, the Humphrey subcommittee observed morosely (17, p. 19): ". . . there have been certain administrative actions taken which tend to evade the question as to whether a Department of Science and Technology is necessary or desirable, and there are a number of indications from the scientific community that there will be opposition to such a proposal, at least until the need therefor has been more clearly established."

The subcommittee held hearings in April 1959 on S. 676 and S. 586 (Senator Kefauver's bill) to establish a Department of Science. Senator Humphrey, aware of the opposition, hedged a bit. His opening statement said that the proposed Department of Science and Technology was to be considered one possible solution to the problems of centrialization and coordination of federal science programs and operations, but not a final conclusion of the committee. The witnesses before the subcommittee were divided. Lewis L. Strauss, as Secretary of Commerce, opposed departmental status for science. Brode, as scientific adviser to the State Department and chairman of the AAAS, strongly favored it. Others pressed for a stronger advisory apparatus at the Presidential level or a study to determine the need for a department and what agencies should be included (18). It was easier to agree on a study commission which, to the advocates of a department, appeared better than nothing, to the dubious, a means of seeking more information, and to the opponents, a device for deflecting action on a controversial subject.

At the conclusion of the April 1959 hearings, the staff of the Senate Committee on Government Operations drafted a bill proposing the establishment of a Commission on a Department of Science and Technology. This was introduced in the Senate on 5 May 1959 as S. 1851, under the joint sponsorship of Senators Humphrey, Capehart, Mundt, Gruening, Muskie, Yarborough, and Keating. In a 1-day hearing (28 May) on S. 1851, S. 676, and S. 586, the subcommittee heard no comforting words from the Eisenhower Administration, Alan S. Waterman, whose NSF budget had been increased from $50 million to $136 million after Sputnik, opposed both a Department of Science and Technology and a commission to study the matter. The Bureau of Budget representative, the official spokesman on all matters dealing with reorganization, did likewise, doubting that "the scientific members of the Commission would necessarily be best able to judge the optimum form of Government organization in this field." Leonard Carmichael, secretary of the Smithsonian Institution, endorsed the study commission but suggested that, if it were established, the membership nominations be made by the National Academy of Sciences (19).

Notwithstanding the administration's opposition, Senator Humphrey for the Committee on Government Operations reported S. 1851 favorably on 18 June 1959 (19). A bipartisan commission was needed, the report said, so that "the Congress and the President may have the benefit of the recommendations of qualified experts in the fields of science, engineering, and technology" as the basis for legislation to improve federal science programs and operations. The committee justified a study commission mainly on the ground that the Congress needed more and better information, As a case in point, Killian had politely declined an earlier invitation to appear before the committee because it might conflict with his advisory role in the White House. Science policy coordination or control at that level, in the committee's belief, would not assure an ample flow of scientific and factual data to the Congress. The Department of Science and Technology, or at least a commission to study its feasibility, was the committee's proposed solution. The Senate did not take up the bill. A companion House bill (H.R. 8325) introduced on 22 July 1959 by Representative Brooks of Louisiana, chairman of the Committee on Science and Astronautics, was referred to the Committee on Government Operations but received no action.

THE OST ALTERNATIVE

Early in 1960 Senator Humphrey put the case for a department or a commission before the American Academy of Political and Social Science (20). But those who favored strengthening the Presidential advisory apparatus rather than a new department for science found a champion in another subcommittee of the same Senate committee—that on National Policy Machinery chaired by Senator Henry M. Jackson. The Jackson subcommittee held hearings in April 1960 on the role of science and technology in foreign and national defense policy. A staff report of 14 June 1961 entitled "Science Organization and the President's Office" rejected the Department of Science idea on the by now familiar ground that the diverse scientific activities of the federal government could not be conveniently extracted to form a new department. It approved such views expressed before the subcommittee by James Fisk, president of Bell Telephone Laboratories, and then observed (21):

"Eight departments and agencies support major technical programs and all parts of the Government use science in varying degrees to help meet the agency objective. This diffusion of science and technology throughout the Government is not a sign of untidy administrative housekeeping. Rather it reflects the very nature of science itself. Organizationally, science is not a definable jurisdiction. Like economics, it is a tool. It is an instrument for accomplishing things having nothing to do with science."

The staff report emphasized the President's responsibility for science policy direction and accordingly recommended the strengthening of his advisory support by the creation of an Office of Science and Technology. It pointed out that the President could take this step through submission of a reorganization plan rather than through the conventional legislative route. The Kennedy administration was asked to submit to the Congress by January 1962 "its considered findings and recommendations for action." On 29 March Reorganization Plan No. 2 of 1962 creating the OST was submitted, to take effect within 60 days if the Congress did not disapprove (22).

Before the plan was formally sent to the 87th Congress, S. 2771 was introduced on 31 January 1962, jointly sponsored by Senators McClellan, Humphrey, Mundt, Cotton, and Yarborough. S. 2771 was similar to S. 1851 of the 86th Congress, which had been reported favorably by the Senate Committee on Government Operations. The revised bill contained a broad declaration of congressional policy and objectives in science and placed more emphasis on the need for improvement in federal programs for processing the retrieval of scientific information. It also provided that the 12-member commission be strengthened by a scientific advisory panel with prescribed qualifications which included "ability to communicate not only to professional scientists but to laymen." Hearings were held on 10 May and 24 July 1962. Some moral support was provided by Carl F. Stover's report of March 1962 on "The Government of Science" to the Center for the Study of Democratic Institutions. A Department of Science and Technology, the Stover report said, would establish for science a major center of policy studies, higher stature, and a more favorable environment for scientific work. Combining all government science functions made no sense, but a single department for those functions less mission-oriented was "a sound and desirable next step in the evolution of Government action with respect to science" (23).

The committee now had to take judicial notice of the alternative scheme recommended by the Jackson subcommittee and seized upon by the Kennedy Administration as a sufficient response to the demands for improved science organizations. Administration spokesmen pointed to OST as a needed mechanism for coordinating science policies and advising the President, whatever the organization of science functions for the government as a whole. Waterman, who was assessing NSF's truncated policy role in the wake of the OST plan, again opposed a commission, as did Elmer B. Staats, deputy director of the Budget Bureau, where all reorganization plans are put together. Their plea was that OST, being new, should have a chance to work. Furthermore, by the "statutory underpinning" of a reorganization plan, OST would give the Congress the kind of access to scientific information sought by the sponsors of S. 2771. This was the persuasive point for congressional acceptance of the plan (24).

Jerome B. Wiesner, who would serve the Kennedy Administration in the quadruple capacity of OST director, President's science adviser, chairman of the President's Science Advisory Committee, and chairman of the Federal Council for Science and Technology, made his first appearance before Congress as OST director when he testified on 31 July 1962 at hearings of the Holifield subcommittee (House Committee on Government Operations). In amplifying his views on science organization, Wiesner gave conditional endorsement to a Department of Science. To "set up a radically new organization" encompassing all the scientific activities of the federal government he considered unworkable. If a "less comprehensive Department of Science were created," including the Atomic Energy Commission, National Science Foundation, National Bureau of Standards, and certain other agencies, he believed the operations of these agencies might be improved. At the same time, the need would remain to coordinate and integrate the activities of these agencies with the related scientific and technical programs of the mission-oriented agencies. "In other words, the OST is neither a substitute for nor in competition with a Federal Department of Science" (25).

The Senate Committee on Government Operations, nost daunted by the new presence of OST, reported favorably (with some technical revisions) on S. 2771, proposing a Commission on Science and Technology (26). The bill passed the Senate by unanimous consent on 8 August 1962 (27). In the House it was referred to the Committee on Science and Astronautics on 9 August, and there it died. The exercise was repeated in the 88th Congress. S. 816, sponsored by Senators McClellan, Humphrey, Mundt, Gruening, Javits, Cotton, and Yarborough, was introduced on 18 February 1963. Chairman McClellan, now the leading sponsor, emphasized that Wiesner, in his testimony before the Holifield subcommittee, maintained that OST and a Department of Science and Technology were not in conflict (28). The bill was approved by the Senate Committee on Government Operations and reported to the Senate on 4 March 1963 (29). It passed the Senate by unanimous consent on 8 March (30) and was referred to the House Committee on Science and Astronautics, which also had a companion bill, H.R. 4346, introduced by Representative Teague of Texas (31). No action was taken on these bills in the House Committee.

In place of a mixed commission, the reaction on the House side was to create several new subcommittees on science. Thus in August 1963, the House Committee on Science and Astronautics created a Subcommittee on Science, Research and Development, chaired by Representative Daddario of Connecticut. And the House of Representatives, a month later, created the Select Committee on Government Research, chaired by Representative Elliott of Alabama. The Select Committee took a dim view of departmental status for science, judging by its tenth and concluding report of 29 December 1964, which contained this statement (32):

"The specters of overlap, gaps, conflict, and duplication among agency programs can best be met through adequate top-level coordination of agency programs. Consolidating research and development into one or a few separate agencies—such as an often suggested Department of Science and Technology—would separate such work from the purposes for which it is performed, the committee believes, with devastating effects both to the work and to the capacities of agencies to carry out their missions."

In the 89th Congress Chairman McClellan, joined by Senators Mundt, Ribicoff, Gruening and Yarborough, reintroduced the commission bill (S. 1136) on 17 February 1965, and Representative Wolff sponsored the companion bill (H.R. 5609) in the House. By now congressional interest in the proposal had waned. No hearings were held, and the Senate committee did not bother to report it out. Humphrey, no longer a Senator, presided over the Senate as Vice President and became immersed in intricacies of space and ocean programs as satatutory chairman of technical councils in these areas. Occasionally, other voices renewed the call for a department. Ralph Lapp proposed a Department of Science in his 1965 book, *The New Priesthood* (33), J. Herbert Holloman, after 5 years as Assistant Secretary of Commerce for Science and Technology, recommended to the Ribicoff subcommittee in 1968 that a Department of Science and Technology be a

prime subject for study by a proposed Commission on Organization and Management of the Executive Branch (*34*). At the year's end, Donald F. Hornig, from the vantage point of "five years at the bench of U.S. science policy," spoke out before the AAAS in favor of a Department of Science as well as a strengthening of the President's science advisory setup (*35*).

As one traces the lines of argument for and against department status for science, it is apparent that they thread back to the controversy of the 1880's. The positive side, projected by the NAS committee report of 1884, is that science will benefit from the status and prestige which go with cabinet rank and large departmental resources. The negative side, well stated by Secretary of the Navy William E. Chandler before the congressional commission in 1884, is that science is not a government mission in itself but an aspect of other and proper departmental missions; consequently science bureaus or functions should be placed or remain within the department to which they are "naturally related" (*36*.) Contemporary formulations haven't improved much on these themes. Proponents of a separate department for science view its secretary as a protector and spokesman of science in government councils, while opponents see a bureaucratic monstrosity in which politics prevail over scientific objectivity. On both sides attitudes are hardened by conviction or softened by practical considerations. Doubtless many who are otherwise well-intentioned toward a new department fear that it would cut down opportunities for grants and contracts given by various uncoordinated government science agencies. Others who are moved by a concern for economy in government than for prestige in science believe that departmental organization would eliminate duplication and insure closer coordination of costly government programs.

CASE FOR A DEPARTMENT

That it is impracticable to tear out research and development functions from department and agency settings and bring them all together in a new department goes without saying. But the case for a Department of Science and Technology cannot be that easily dismissed. To argue that science is a means and not an end, or that science (and technology) is not by itself a major purpose of government justifying departmental organization, narrows the issue unduly and overlooks some very practical problems. Agricultural research, let us quickly agree, is properly a part of the Department of Agriculture mission, but what about the large relatively self-contained or semiautonomous agencies with missions which fall almost completely in the domain of science and technology and which overshadow in size and importance some of the older departments? If AEC's mission is atomic energy development and NASA's is space exploration, it is merely tautological to distinguish these missions from science and technology in given fields. Then it becomes a pragmatic problem of government organization (and politics) to determine whether it is advantageous to bring together in a single department selected agencies and subagencies associated by shared purposes, related functions, or some other defining element of mutual involvement. Modern precepts of government organization and administration favor a relatively few strong departments encompassing similar or related functions in place of a profusion of independent agencies. The quest here is more compelling than a desire for organizational symmetry or housekeeping tidiness. The President, as manager of the executive branch, does not have the time to deal with scores of agencies. To maintain a proper "span of control" he must strive to bring these agencies within departmental confines and depend on the department heads to administer the manifold affairs of government (*37*).

The challenge is that government in all its diversity does not lend itself easily to departmentalizing by major purpose or mission or any other organizing principle. Most organizational arrangements are less ambitious—expedient responses to urgent problems dictated more by politics than political science. Government takes on a patchwork appearance. From time to time attempts are made to sort out and rearrange agencies and functions in more orderly patterns, even to the extent of disestablishing or reforming old departments. Not every worthy government cause which seeks wider acceptance and ampler resources through separate departmental status can be accommodated. A multiplicity of departments would defeat the rationale for departmental organization. On the other hand, if a department embraces too many missions or disparate functions, it becomes unwieldly—a conglomerate or a holding company in which the secretary struggles constantly to keep in line strong-willed administrators of operating agencies.

In a dynamic, democratic society, governmental reorganization, despite the obstacles, signifies changing policy, a new approach—and reorganization on a department scale makes the greatest impact. Accordingly every administration can be expected to give special attention to such possibilities. Since World War II, each President has opted for a new department—Truman for DOD, Eisenhower for HEW, Kennedy for HUD, and Johnson for DOT (*38*). The Nixon Administration has established an advisory group on reorganization, whose recommendations are yet to be made (*39*). Characteristically, the post-World War II departments each represent a coalescence of established agencies and resources to subserve a broader policy or purpose of government. In several instances, the way was prepared by interim coordinating organizations. Thus, the DOD was preceded by a looser federation formally known as the Military Establishment, HEW by the Federal Security Agency, and HUD by the Housing and Home Finance Agency. The Department of Transportation, the latest departmental creation, did not go through a transitional form but established transportation agencies were a base upon which to build.

Science and technology, comprising large sectors of government activity with various organizational forms, have a similar potential for departmental organization. When great national problems arose, requiring positive and pointed government response, independent agencies were created—the AEC for the control of atomic energy after Hiroshima, the NSF to preserve the post-World War II momentum of research and development, and NASA after Sputnik. With the passing years, as missions are completed or redirected and as agencies mature, it is difficult to maintain the momentum and the excitement of the early days. New problems emerge, priorities are reassessed, talents are turned elsewhere. The atomic energy program is about 25 years old, the NSF has been in business 18 years, and the space agency, past its 10th birthday, will age rather quickly after a lunar landing. Reorganization generates its own excitement, infuses new energies, develops new emissions.

CANDIDATES FOR INCLUSION

Thus AEC and NASA, independent technical agencies with multibillion-dollar yearly budgets, are prime candidates for transfer to a new department. Their interests increasingly will overlap as boosters and spacecraft come to depend more on nuclear technology. Both are sponsors of hardware development as well as basic research. Both are involved in intricate ways with Department of Defense programs. Both have large laboratory complexes and diversified resources for research and development. Both are faced with probable cutbacks and the need to reassess missions for the long term. The reassessment, in NASA's case, associated with the moon landing, which will climax a decade of technical effort directed largely to this single goal. New vistas of space exploration beckon, but in the welfare decade of the 1970's more earth-bound causes will exert a strong gravitational pull on funds.

As for the AEC, the growth of nuclear stockpiles to what many regard as overkill dimensions and the gradual shift to industry of responsibility for nuclear power development are less climactic. The safety and regulatory functions associated with nuclear power, which some foresee as AEC's major responsibility ahead, could well be transferred to the Federal Power Commission, possibly helping to rejuvenate an old-line agency, just as the Federal Communications Commission has had to grapple with the regulatory aspects of satellite communications. Nuclear ordnance development and fabrication possibly could be shiften to the Department of Defense (*40*). The Department of Science and Technology would have, one may conceive, a space service and an atomic service, perhaps less ambitious than at present but still performing vital scientific and technical work. The reorganization also would permit a realignment and better integration of the great laboratory complexes associated with these two agencies. Indeed, the realigning process for federal laboratories as a whole could be speeded up by this means.

The National Science Foundation is a somewhat different type of agency. It maintains no laboratories except a few contract research centers and builds no large projects or systems, with the exception of the ill-fated Mohole project. It values its relative independence and freedom from political influences in supporting academic science. In terms of prospective departmental status, it could be argued that NSF has as much affinity with education as with science, and if a separate Department of Education were to be created, undoubtedly there would be advocates for inclusion of NSF. On the other hand, education reaches out toward areas of contemporary concern not closely identified with science, such as job training and placement and manpower development, so that some envisage education as the organizing principle for a Department of Human Resources (*41*). Hornig favors the science-education nexus. He would make NSF the "core" of a Department of Science, linking basic research closely with higher education. In this concept, the new department would be little concerned with technology as distinguished from science, leaving technological development to "agencies with specific tasks and missions" (*35*).

In the writer's view, the prospects for departmental status are greatly improved if technology and science are conjoined. Creating a new department is difficult enough in itself, but technology provides move leverage and power for organizational change than basic research or pure science. The new department would need a bigger core or a broader base than that offered by NSF alone. In any event, the writer sees no serious obstacle to making the NSF a component of a Department of Science and Technology. In that way grants and other financial support to academic institutions could be better integrated, since NASA and AEC also are substantial contributors to academic science. Futhermore, the 1968 amendments to the National Science Foundation Act add applied research to the agency's responsibilities and thereby bring it closer to the technological concerns of other government agencies (*42*).

There is good logic in establishing a Department of Science and Technology to house not only older, more mature agencies but also new ones which have not yet found a suitable home. Oceanography and related disciplines or technologies may be put in this class. Numerous government agencies are engaged in marine science activities, but the Congress has been groping for a decade or more to find the organizational base for a broad program

of ocean development. The 1966 legislation, which created a temporary commission and a council for marine sciences and resources, stated a policy and provided a coordinating group but sidestepped the basic organizational problem (*43*). The Commission on Marine Sciences, Engineering and Resources, on the eve of its demise, proposed that a National Oceanic and Atmospheric Agency be created as "the principal instrumentality within the Federal Government for administration of the Nation's civil marine and atmospheric programs." At the same time, the commission pointed out that it was proposing "an organization which can easily fit into a more fundamental restructuring of the Federal Government" (*44*). Clearly, the commission was leaving the door open for incorporation of marine sciences and resources in a Department of Science and Technology.

IMMEDIATE ADVANTAGES

One of the immediate advantages in creating a new government house for science and technology is the opportunity it affords for eliminating the clutter in the Executive Office of the President or at least making room for needed new services. The Aeronautics and Space Council and the National Council on Marine Resources and Engineering Development both could be abolished or, along with PSAC and OST, shifted in whole or in part to the new department, though it must be recognized that the President will continue to need a science adviser with some staff of his own. The Vice President, now statutory chairman of the space and marine councils, could retain his valuable association with government science and continue to gain the technical information and insight needed for leadership in our technocratic society by serving in some appropriate capacity, possibly as chairman of the advisory apparatus annexed to the new department. The Office of Telecommunications Management, for want of a better alternative, also could be housed in the Department of Science and Technology. This office needs strengthening to deal with communications problems of growing severity and technical sophistication. The Post Office and Transportation Departments each could make a claim for telecommunications management, but obviously they have enough problems of their own.

The removal from the Executive Office of its scientific or technical councils and offices is not a downgrading of sceince but a practical recogniton that the President cannot give them sustained attention (*45*). Moreover, they have less impact on affairs than is usually supposed. Their directors parade before the government departments and agencies clothed in the uniform of Presidential prestige but are uncertain to what extent they can speak or act in his name. The department head directing a broad range of scientfic and technical programs with a large budget has power and prestige of a more compelling kind. His command of resources, public visibility, and cabinet participation enable him to serve as principal science adviser to the President in a much more direct and positive way than the White House adviser or Executive Office functionary several steps removed from the scene of departmental action and operations. If the scientific community is concerned about prestige for science in government, there is considerable trade-off value in a department head as against the Executive Office coordinator or consultant.

Another advantage is that the new department could house technical agencies or bureaus which are obstacles to, or casualties of, other reorganizations. For example, in January 1967, President Johnson proposed a merger of the Departments of Commerce and Labor (*46*). He did not push the proposal when the response in congressional and some other quarters seemed unfavorable. Despite the inevitable resistance, there was merit in a merger, the objective being a department of economic affairs or economic development. Since the Department of Commerce has acquired by historical accretion a number of important technical services now encompassed in the Environmental Science Services Administration, the National Bureau of Standards, the U.S. Patent Office, and other units, it would have made sense, in the event of a Commerce-Labor merger, to extract these technical agencies and place them in a Department of Science and Technology.

Finally, a Department of Science and Technology would provide better interface with the Department of Defense. Although it would not be wise to transfer research and development commands, office, or agencies from the Department of Defense to the civilian department in any wholesale fashion, conceivably several military-managed laboratories, agencies, or programs could be transferred on a selective basis if their relationship to military needs is limited, if they now serve many government users, and if their concern is more with science than with defense (*47*). A civil department conveniently could assume DOD responsibilities in supporting educational centers of excellence or sponsoring certain kinds of social or other research. This need not be a one-way transfer process, since formation of a new department might well involve assignment of certain functions to the military, as mentioned before in the case of nuclear ordnance. More systematic coordination and congruence of policy and program can be achieved by two major departments in balance than by one department on the military side dealing with assorted scientific and technical agencies on the civil side. Even a casual perusal of the numerous memoranda of understanding, working arrangements, and coordinating mechanisms between the DOD and NASA, for example, suggests the complexity of these interagency relationships. Complextiy cannot be eliminated but it can be reduced The logic here is even more persuasive as agencies wrestle with joint projects and interacting programs.

All the decisions as to the composition of the Department of Science and Technology need not, of course, be made at one time. If the universe of government agencies is surveyed and all possible candidates identified, then problems of transfer would seem too overwhelming for immediate solution. The important first step is to assemble the independent agencies and subagencies as the departmental core, and then to build around them. This in itself will be a monumental task, but the vision of the National Academy committee of 1884 may still be sound (*48*).

REFERENCES AND NOTES

1. Act of 7 July 1884, 23 Stat. 219. The commission, composed of three members each from the House and Senate, was known as the Allison Commission after its chairman, Senator William B. Allison of Iowa. Lyman served as one of the House members on the commission until the end of the 48th Congress on 3 March 1885. He was defeated for reelection.

2. *Congr. Rec.* 15, 6175 (7 July 1884).

3. The NAS committee's report was transmitted to Lyman by O. C. Marsh, president of the National Academy of Sciences, by letter dated 16 Oct. 1884. It was printed in Senate Misc. Doc. No. 82 (serial No. 2345, 49th Congress, 1st session (1886) vol. 4; also as appendix D to the *Report of the National Academy of Sciences for 1884* (Government Printing Office, Washington, D.C., 20 April 1885), p. 33.

4. The NAS committee proposed that the commission include the president of the National Academy of Sciences; the secretary of the Smithsonian Institution; two nongovernment civilian scientists of high reputation appointed by the President of the United States for 6-year terms; one officer of the Corps of Engineers; one Navy professor of mathematics skilled in astronomy (the last two to be designated by the President for 6-year terms); the superintendent of the Coast and Geodetic Survey; the director of the Geological Survey; and the officer in charge of the Meteorological Service. The secretary of the department including the science agencies would be ex officio president of the commission, and the commission would be attached to the office of the secretary.

5. Senate Rep. No. 1285, 49th Congress, 1st session (8 June 1886), p. 54.

6. See A. Hunter Dupree, *Science and the Federal Government* (Harvard Univ. Press, Cambridge, 1957), p. 215. Dupree writes of this period: "In contrast to the glorious and successful defense of the new scientific bureaus, the experts had done a ragged job for a Department of Science. The National Academy had done nothing to push the brainchild of its committee, which admitted political defeat in advance" (p. 230).

7. *Congr. Rec.* 92, A14 (1 Feb. 1946). The Luce bill provided for a Secretary appointed by the President with Senate confirmation, and five Assistant Secretaries, appointed by the President, to head, respectively, the following bureaus: Physics and Mathematical Sciences, Public Health and Social Sciences, Scientific Education and Information, Biological Sciences, and Engineering and Technological Sciences. The Secretary would be empowered to appoint an advisory council of not more than 100 members representing all branches of science.

8. *Science—the Endless Frontier*, A Report to the President on a Program for Postwar Scientific Research (July 1945). The report was reprinted by the National Science Foundation (Government Printing Office, Washington, D.C., July 1960).

9. *Congr. Rec.* 93, 10567 (17 Nov. 1947). See Don K. Price, *Government and Science* (New York Univ. Press, New York, 1954), p. 48.

10. *Science and Public Policy*, Report of the President's Scientific Research Board (Government Printing Office, Washington, D.C., 4 Oct. 1947), vol. 3, p. 23.

11. Public Law 81–507, 64 Stat. 149 (10 May 1950).

12. *Progress Report on Science Programs of the Federal Government*, Senate Rep. No. 2498, 85th Congress, 2d session (9 Sept. 1958), p. 14; *Congr. Rec.* 105, 1078 (23 Jan. 1959).

13. Public Law 85–567, 72 Stat. 426 (29 July 1958).

14. Killian's address, made on 29 Dec. 1958, was printed in *Science Program—86th Congress*, Senate Rep. No. 120, 86th Congress, 1st session (23 March 1959), p. 3.

15. D. K. Price, *Government and Science* (New York Univ. Press, New York, 1954), p. 63. Price was discussing the potential role of NSF as a central science agency and not specifically a Department of Science.

16. Senate Rep. No. 120, 86th Congress, 1st session (23 March 1959), p. 26. Berkner's views were set forth in an address "National Science Policy and the Future," at Johns Hopkins University (16 Dec. 1958), published in the same report, appendix D, p. 110. Brode's address on the same subject as retiring president of the AAAS (28 Dec. 1959) was placed in the *Congressional Record*, along with press articles and editorials, by Senator Kefauver [*Congr. Rec.* 106, 615 (18 Jan. 1960)]. For additional materials on the pros and cons of a department, see *Science and Technology Act of 1958*, Analysis and Summary by the Staff of the Senate Committee on Government Operations, Senate Doc. No. 90, 85th Congress, 2d session (April 1958).

17. Senate Rep. No. 120, 86th Congress, 1st session (23 March 1959), p. 29.

18. *Create a Department of Science and Technology*, hearings before the Subcommittee on Reorganization and International Organizations, Senate Committee on Govern-

ment Operations, 86th Congress, 1st session, on S. 676 and S. 586 (16–17 April 1959), pt. 1, pp. 47 and 71.

19. *Establishment of a Commission on a Department of Science and Technology,* Senate Rep. No. 408 (18 June 1959), p. 6.

20. *Ann. Amer. Acad. Polit. Soc. Sci.* (Jan. 1960), p. 27; Senator Humphrey placed this article in the *Congressional Record* [106, 5235 (10 March 1960)].

21. *Organizing for National Security: Science Organization and the President's Office,* staff study by the Subcommittee on National Policy Machinery, Senate Committee on Government Operations, 87th Congress, 1st session (committee print, 14 June 1961), p. 1.

22. House Doc. 372, 87th Congress, 2d session (29 March 1962).

23. Senator Humphrey placed an excerpt from the Stover report in the *Congressional Record* [108, 11822 (27 June 1962)]. A statement by Stover supporting the commission proposal was printed in *Establishment of a Commission on Science and Technology,* Senate Rep. No. 1828, 87th Congress, 2d session (6 Aug. 1962), p. 50. The report *The Government of Science* proposed that the Department of Science and Technology absorb the activities of NSF, PSAC, and FCST, along with the Weather Bureau, National Bureau of Standards, Office of Saline Water, Coast and Geodetic Survey, Navy Hydrographic Office, Naval Observatory, portions of the Smithsonian research work, and the Antarctic programs of the Navy and NSF. Larger agencies such as NASA and NIH were cited as candidates for inclusion, though AEC was excluded on the ground that its size and operational character could overwhelm the new department.

24. *Create a Commission on Science and Technology,* hearings before the Senate Committee on Government Operations, 87th Congress, 2d session, on S. 2771 (24 July 1962), pt. 2; *Reorganization Plan No. 2 of 1962,* hearings before a subcommittee of the House Committee on Government Operations, 87th Congress, 2d session (17 April 1962). Jerome B. Wiesner wrote later: "Possibly the most important consequence of providing a statutory basis for the scientific activities in the Executive Office of the President is that the Director may now appear before Congress to explain, when possible, the Governmentwide views of activities and problems" [*Where Science and Politics Meet* (McGraw-Hill, New York, 1965), p. 47].

25. *Systems Development and Management,* hearings before the Military Operations Subcommittee of the House Committee on Government Operations, 87th Congress, 2d session (1 July 1962), pt. 1, p. 156.

26. *Establishment of a Commission on Science and Technology,* Senate Rep. No. 1828, 87th Congress, 2d session (6 Aug. 1962).

27. *Congr. Rec.* 108, 15968 (8 Aug. 1962).

28. Senator McClellan placed excerpts from the Wiesner testimony in the *Congressional Record* on two separate occasions [109, 2395 (18 Feb. 1963) and *ibid.* (23 May 1963), p. 9299]. It was also carried in the committee report cited below (*29*).

29. *Establishment of a Commission on Science and Technology,* Senate Rep. No. 16, 81st Congress, 1st session (4 March 1963).

30. *Congr. Rec.* 109, 3808 (8 March 1963). In remarks accompanying the bill Senator Humphrey said an independent "Hoover-type" commission was needed to (i) counterbalance the executive's excessive dependence on a small in-group of scientists for policy, advice and program evaluation; (ii) review, with the aim to improve, the activities of the NAS–NRC as well as those of the government agencies; and (iii) examine federal organization for information retrieval.

31. Referring the bills to the House Committee on Science and Astronautics signified a change in jurisdictional policy. Heretofore such bills had been referred to the House Committee on Government Operations, which generally has jurisdiction over organization matters.

32. *National Goals and Policies,* House Rep. No. 1941, 80th Congress, 2d session (29 Dec. 1964), p. 49. The Select Committee expired with the 88th Congress on 3 Jan. 1965. In accordance with one of its recommendations, a Subcommittee on Research and Technical Programs was established within the House Committee on Government Operations. This subcommittee, chaired by Representative Reuss, was in existence through the end of the 90th Congress.

33. R. Lapp, *The New Priesthood* (Harper & Row, New York, 1965), p. 204. Lapp proposed that the Department of Science make basic research grants (on a lump-sum basis); manage the government laboratories; absorb all or part of the functions of OST, PSAC, and FCST; and take over the functions of the AEC (civilian part), NSF, ONR, Office of Saline Water, National Bureau of Standards and the Weather Bureau.

34. *Establish a Commission on the Organization and Management of the Executive Branch,* hearings before the Subcommittee on Executive Reorganization of the Senate Committee on Government Operations, 90th Congress, 2d session (23 Jan. 1968), p. 58. Hollomon proposed that the Department of Science and Technology include the NSF, NASA, ESSA, National Bureau of Standards, Geological Survey, Census Bureau "and perhaps parts of NIH and the AEC."

35. D. F. Hornig, remarks at AAAS Meeting, Dallas, Texas (29 Dec. 1968).

36. Senate Misc. Doc. No. 82 (serial No. 2345), 49th Congress, 1st session (1886), vol. 4, p. 66.

37. The usual text for this organizational aproach is the report of the First Hoover Commission, "General Management of the Executive Branch" (Feb. 1949), which recommended that: "The numerous agencies of the executive branch must be grouped into departments as nearly as possible by major purposes in order to give a coherent mission to each Department" (p. 34). Senator Humphrey quoted this recommendation in his *Annals* article (*20*).

38. The Department of Housing and Urban Development actually was established during the Johnson Administration, although President Kennedy pressed for its creation from the beginning of his administration. The stumbling block to congressional acceptance was President Kennedy's announced intention to appoint Robert C. Weaver as Secretary of the new department. Similarly, congressional opposition to a putative department head (Oscar R. Ewing) prevented President Truman from getting the Department of Health, Education, and Welfare, which was created in the Eisenhower Administration.

39. President Nixon announced the appointment of an Advisory Council on Executive Organization on 5 April 1969. The members are: Roy L. Ash (chairman), president of Litton Industries, Inc.; George Baker, dean of the Graduate School of Business Administration, Harvard University; John B. Connally, former governor of Texas; Frederick R. Kappel, chairman of the executive committee, American Telephone and Telegraph Company; and Richard M. Paget, member of Cresap, McCormick and Paget.

40. Lapp (*33*, p. 206) proposed that the AEC's nuclear production facilities be mothballed in part and the remainder transferred to the Department of Defense. Representatives Craig Hosmer, in an address "The Science Establishment: Where Is It Headed?" [*Congr. Rec.* (6 March 1968), p. E1606] posed the AEC problem in terms of diversification or decline: "Unless AEC's charter is revised to give it a responsibility to conduct research for other government agencies, it would seem that some of these facilities and programs would be better off under an organization more fundamentally oriented toward basic research, such as the National Science Foundation."

41. R. E. Miles, Jr., *Public Admin. Rev.* 27, 1 (March 1967). Text included in hearings before the Subcommittee on Executive Reorganization, Senate Committee on Government Operations, 90th Congress, 2d session (23 Jan. 1968), p. 115.

42. Public Law 90–407, 82 Stat. 360 (18 July 1968).

43. Public Law 85–454, 80 Stat. 203 (17 June 1966). See also Public Law 90–242, 81 Stat. 780 (2 Jan. 1968).

44. *Our Nation and the Sea,* Report of the Commission on Marine Science, Engineering and Resources (9 Jan. 1969 reprint), p. 7.

45. ". . . The easy answer to all problems in Government, scientific and nonscientific, seems to be to move them closer to the President. I don't think that tenable for all things—he is already overburdened" [D. F. Hornig (*35*)].

46. *State of the Union Message,* House Doc. No. 1, 90th Congress, 1st session (19 Jan. 1967), p. 3.

47. A current example of a government laboratory with diversified scientific capabilities and no obvious place to go upon withdrawal of military sponsorship is the Navy Radiological Defense Laboratory. It is slated for closure by the end of this year, even though its resources could be readily adapted to important research in the civil sector. The proposed closure of NRDL also illustrates the poor planning not infrequently found in government. Six months ago a $6-million cyclotron was installed for special research in biomedical effects of radiation.

48. The views expressed herein are the author's and not necessarily those of any member of the Congress.

S. 4454—INTRODUCTION OF A BILL TO HALT ATTACKS ON POLICEMEN, FIREMEN, AND JUDICIAL OFFICERS

Mr. SCOTT. Mr. President, the growing trend toward violence as a means of political expression is a subject of utmost concern to the citizens of Pennsylvania. Violence directed against public officials, solely because they are public officials, is a particularly insidious manifestation of this trend, and cuts against the very fabric of American society. With alarming frequency, policemen, firemen, judicial officers, and other public officials are being injured and killed, not in the performance of their official duties, but because of what their official duties are, because to some demented minds a strike against a public official has become synonymous with a strike against problems that exist in our society.

There are many things wrong in our Nation, inequalities persist, the wheels of Government need oiling, our priorities do not always reflect our needs. But those who find themselves frustrated by the seeming slowness of change often forget the greatest right that we as Americans share—the right to openly and publicly dissent from the policies and practices we disagree with—the right to openly and publicly work to change these policies, to work within our system of government at all levels to effect the changes we believe are needed.

Nowhere else in the world is this right so highly cherished and protected. It is anchronistic that some are employing violence to effect change in a society which, above all others, contains the channels for orderly change within its own structure.

Today, those who have been entrusted with the preservation of order, the enforcement of our laws, and the protection of individual rights have become the target of the most irrational kind of behavior immaginable. During 1969, there were 35,202 assaults on law enforcement officers, and a record high of 86 policemen were killed, an increase of 34 percent over the previous year. So far this year, 16 police officers have been killed in unprovoked attacks. The Nation recently watched with horror the kidnap and murder of a judge. Our firemen have become the target of sniper fire as they work to save lives and property. This politics of violence, be it by conspiracy or individual design, must be stopped by all lawful means.

I strongly support legislation introduced by my colleague, Senator SCHWEIKER, and others to make the full force of our law enforcement talent available to stop these deliberate and unprovoked attacks on our policemen, firemen, and judicial officers.

Because of my deep concern, I am today introducing a proposal of my own. designed to make Federal crime fighting resources available to local law enforcement officials in situations not covered under the bills now under consideration. My proposal does not create a new Federal crime, but will provide increased Federal assistance to State and local law enforcement officials.

It allows local officials to request that the Attorney General of the United States make the personnel and facilities of the Federal Bureau of Investigation available to assist local investigators where a policeman, fireman, or judicial officer has been assaulted while engaged in the performance of his official duties. Under my proposal, there need not be evidence of interstate activity by those committing the assault and local officials may request Federal assistance immediately following the attack.

The free flow of commerce throughout the United States is dependent in large part upon the orderly and efficient operation of police, fire departments, and the courts, and assaults upon these public servants because of their official position constitutes a direct interference with interstate commerce. It is entirely fitting that local law enforcement officials be able to utilize Federal resources in such circumstances, even though there is not immediate evidence of the violation of a Federal statute.

The current reign of violence is intolerable and must be stopped. Those perpetrating these acts must be brought to trial and punished under the law, and I believe that the legislation now being considered by this subcommittee will go a long way to making this possible.

But in our determination to apprehend and punish the wrongdoers, let us not repress those who dissent lawfully. The late Chief Justice Hughes once stated:

> The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means (DeJonge v. Oregon, 1937.)

In these days of misunderstanding and growing polarization, it is more important than ever that the legitimate channels of communication and change remain open. Let us heed Justice Hughes' admonition. Let us who are elected representatives work to convince those who want change that our system of government is receptive to their views. Moreover, let us show those who have turned toward violence that it is neither a means nor an answer, but rather a totally unacceptable and self-defeating tactic that will not be tolerated in our democratic system of government. It should be clear to all that we will take the steps necessary to put an end to these terroristic attacks.

The PRESIDING OFFICER (Mr. MUSKIE). The bill will be received and appropriately referred.

The bill (S. 4454) to make available Federal assistance to local law enforcement agencies in cases involving the killing of State and local law enforcement officers, firemen, and judicial officers, introduced by Mr. SCOTT, was received, read twice by its title, and referred to the Committee on the Judiciary.

S. 4456—INTRODUCTION OF A BILL RELATING TO ANNUITIES OF WIDOWS OF SUPREME COURT JUSTICES

Mr. HRUSKA. Mr. President, I am introducing, for appropriate reference, a bill to increase the annuities of widows of Supreme Court Justices from $5,000 to $10,000 per annum, payable monthly.

This bill reflects the view that the pensions now being paid to the widows of Supreme Court Justices are woefully inadequate in amount.

On January 14, 1937, a private bill was passed creating a pension of $5,000 per annum for the widow of a President of the United States (S. 591, 75th Congress, first session, Private Law No. 1).

In 1954, pensions were created for the widows of Supreme Court Justices payable at the rate of presidential widows; namely, $5,000 per annum (28 U.S.C. 375).

In 1958, by general law, the pensions of presidential widows were increased from $5,000 to $10,000, but the widows of Supreme Court Justices were not included in the increase. As a result, these widows must live on an amount which was determined in 1937.

It is to be noted that a bill has been introduced in the Senate that would make Supreme Court Justices eligible to participate in the contributory survivors' annuity system that has long been available to all other Federal judges, but any Justice who elects to participate in that system must irrevocably waive the benefits of the widow's pension provided by 28 U.S.C. 375. If that bill is enacted into law, it is expected that present and future Supreme Court Justices will elect to participate in the contributory system, thus eliminating their widows from the coverage of 28 U.S.C. 375. It is therefore anticipated that the benefits of the present bill would, as a practical matter, be limited to the widows of deceased Justices, who are now receiving the $5,000 annuity. As of September, 1970, there were six such widows, all over 75 years of age.[1]

The present bill is designed, in short, simply to raise to at least a subsistence level the pensions paid to the six living women whose husbands served their country as Justices of the U.S. Supreme Court.

A similar bill was introduced by the late Senator Dirksen in 1963—S. 1686, 88th Congress, first session. The statement he made in introducing that bill 7 years ago appears in the CONGRESSIONAL RECORD, volume 109, part 8, page 10444. His words are even more cogent today:

> Mr. DIRKSEN. Mr. President, at times, in the rush of events, those who, because of their age or their situation cannot speak out, are passed by. A case of this type has recently been called to my attention. Nine years ago when we were considering the question of annuities for widows of Supreme Court Justices, we passed a law providing that their annuity should be the same amount as the annuity authorized for the widow of a President of the United States. We did this by incorporating in that law a reference to a statute which had been enacted in 1937 dealing with the annuity of a President's widow.
>
> A few years ago, in 1958, it became apparent to us that an amount of money which might have been adequate for a widow in 1937 was no longer sufficient for her support in 1958, and we therefore provided for an increase in the annuity of a widow of a former President. However, because of a quirk in the law providing for annuities of widows of Supreme Court Justices, which referred by name to the act passed in 1937, these widows were not caught up in the new law which provided for the increase in the annuities to the widows of Presidents. As a result, those fine ladies have been forced to make do on an amount which was determined in 1937 and there is not a one of us who does not know how inadequate such an amount is today.
>
> I have been informed that there is some urgency about this matter because of the circumstances in which several of the widows of Supreme Court Justices now find themselves in their efforts to live in 1963 upon a stipend which was determined in 1937. Therefore, I have introduced a bill to bring these annuities into line with those we provided in 1958, and I hope that this bill will be accorded a most expeditious treatment.

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

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

The bill (S. 4456) to amend section 375 of title 28 of the United States Code, relating to the annuities of widows of Supreme Court Justices, introduced by Mr. HRUSKA, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

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[1] Mrs. Harold H. Burton, Mrs. Felix Frankfurter, Mrs. Robert H. Jackson, Mrs. Sherman Minton, Mrs. Wiley Rutledge, and Mrs. Fred M. Vinson.

S. 4456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 375 of title 28 of the United States Code, as amended, is amended by striking out "in the amount payable to the beneficiary under the Act of January 14, 1937 (50 Stat. 923, chapter 3)," and inserting in lieu thereof: "of ten thousand dollars."

The amendment made by this Act shall take effect with respect to annuity payments made beginning with the first month beginning after the date of enactment of this Act.

ADDITIONAL COSPONSORS OF A BILL

S. 4191

At the request of the Senator from Indiana (Mr. BAYH), the Senator from Michigan (Mr. HART), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Ohio (Mr. YOUNG), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 4191, to protect the constitutional rights of those subject to the military justice system, to revise the Uniform Code of Military Justice, and for other purposes.

SENATE RESOLUTION 475—SUBMISSION AND CONSIDERATION OF A RESOLUTION RELATING TO CERTAIN CEREMONIES FOR INDIVIDUALS MISSING IN ACTION IN SOUTHEAST ASIA

Mr. CURTIS (for himself, Mr. MANSFIELD, Mr. SCOTT, Mr. ALLEN, Mr. ALLOTT, Mr. BOGGS, Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CHURCH, Mr. COOPER, Mr. COTTON, Mr. DODD, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. EASTLAND, Mr. ERVIN, Mr. GOLDWATER, Mr. HANSEN, Mr. HART, Mr. HRUSKA, Mr. HUGHES, Mr. MCGEE, Mr. MILLER, Mr. MUNDT, Mr. NELSON, Mr. PEARSON, Mr. PERCY, Mr. RIBICOFF, Mr. SAXBE, Mr. THURMOND, Mr. TOWER, Mr. WILLIAMS of Delaware, Mr. YOUNG of North Dakota, Mr. JORDAN of North Carolina, Mr. BYRD of West Virginia, Mr. GRIFFIN, Mr. BAYH, Mr. STENNIS, Mr. CASE, and Mr. COOK) submitted a resolution (S. Res. 475) to express the sense of the Senate with respect to certain ceremonies designed to express publicly the concern of the people of the United States for individuals missing in action in Southeast Asia or being held captive as prisoners of war by the Government of North Vietnam and its allies, which was considered and agreed to.

(The remarks of Mr. CURTIS when he submitted the resolution appear later in the RECORD under the appropriate headings.)

ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 463

At the request of the Senator from Connecticut (Mr. RIBICOFF), his name was added as a cosponsor of Senate Resolution 463, a resolution expressing the sense of the Senate with respect to a national policy designed to relieve and avoid many of the problems resulting from concentration of industry and population in metropolitan areas.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 12, 1970, he presented to the President of the United States the following enrolled bills:

S. 1461. An act to amend section 3006A of title 18, United States Code, relating to presentation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States;

S. 1708. An act to amend the Land and Water Conservation Fund Act of 1965, and for other purposes;

S. 2916. An act to establish the Plymouth-Provincetown Celebration Commission;

S. 3014. An act to designate certain lands as Wilderness; and

S. 3529. An act for the relief of Johnny Mason, Junior (Johnny Masons, Junior).

PROPOSED AMENDMENT TO THE CONSTITUTION RELATIVE TO EQUAL RIGHTS FOR MEN AND WOMEN—AMENDMENTS

AMENDMENT NO. 1048

Mr. BAKER submitted amendments, intended to be proposed by him, to the joint resolution (H.J. Res. 264) proposing an amendment to the Constitution of the United States relative to equal rights for men and women, which were ordered to lie on the table and to be printed.

AMENDMENT NO. 1049

Mr. ERVIN proposed an amendment to House Joint Resolution 264, supra, which was ordered to be printed.

(The remarks of Mr. ERVIN when he proposed the amendment appear later in the RECORD under the appropriate heading.)

DEPARTMENT OF DEFENSE APPROPRIATION BILL, 1971—AMENDMENT

AMENDMENT NO. 1050

Mr. TYDINGS submitted an amendment, intended to be proposed by him, to the bill (H.R. 19590) making appropriations for the Department of Defense for the fiscal year ending June 30, 1971, and for other purposes, which was referred to the Committee on Appropriations and ordered to be printed.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 949 TO H.R. 17550

At the request of the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Iowa (Mr. HUGHES) was added as a cosponsor of amendment No. 949 to H.R. 17550, the Social Security Amendments of 1970.

AMENDMENT NO. 988 TO H.R. 17550

At the request of the Senator from Maryland (Mr. TYDINGS), the Senator from Maryland (Mr. MATHIAS), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of amendment 968 to H.R. 17550, the Social Security Amendments of 1970, to provide that income from entertainment activities held in conjunction with a public fair conducted by an organization described in section 501(c) shall not be unrelated trade or business income and shall not affect the tax exemption of the organization.

NOTICE OF HEARING ON NOMINATIONS

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Mississippi (Mr. EASTLAND), the chairman 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:

Clarkson S. Fisher, of New Jersey, to be U.S. district judge for the district of New Jersey, vice Reynier J. Wortendyke, Jr., retired.

John J. Kitchen, of New Jersey, to be 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. Lacey, of New Jersey, to be 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 U.S. district judge, 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, northern district of Ohio, vice Gerald E. Kalbfleisch, retired.

Gordon Thompson, Jr., of California, to be U.S. district judge, 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 U.S. district judge, southern district of California, vice a new position created by Public Law 91–272, approved June 2, 1970.

Samuel Conti, of California, to be U.S. district judge, northern district of California, 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).

NOTICE OF HEARING ON NOMINATION OF DAVID OGDEN MAXWELL

Mr. SPARKMAN. Mr. President, I wish to announce that the Committee on Banking and Currency will hold a hearing on Tuesday, October 13, 1970, on the nomination of David Ogden Maxwell, of Pennsylvania, to be General Counsel of the Department of Housing and Urban Development.

The hearing will commence at 10 a.m. in room 5302, New Senate Office Building.

ADDITIONAL STATEMENTS OF SENATORS

SALE OF ARMS TO PAKISTAN

Mr. SAXBE. Mr. President, I have seen reports about the administration's decision to sell arms to Pakistan. According to a report in the Washington Post of October 8, 1970, the Government intends to sell 300 armored personnel carriers, 18 F–104A starfighter supersonic interceptors and seven B–57 bombers to the Government of Pakistan. There are also reports that the Indian Government has made strong protests against the decision here and to our Ambassador in India, Senator Keating.

I visited India last year and again this year. I know something of Indian susceptibilities on the subject of American arms for Pakistan. This action of our Government will be interpreted by Indians as hostile. It will cause trouble not only in our relations with India but also in India-Pakistan relations.

Our Government is engaged in serious efforts to defuse the situation in South East Asia and in the Middle East. It makes no sense for us to kindle the sparks of conflict in the South Asian subcontinent.

India disagrees with us on some issues, but is friendly and has been helpful in difficult international problems. India has done us no harm. It is the world's largest democracy: it is a peaceful country, and it has a special position of its own in Asia and in the world. It makes no sense for us to make an enemy of this friendly democracy by futile efforts to please and placate Pakistan.

We want to have friendly relations with Pakistan; but Pakistan, it seems to me, Mr. President, is hard to please. Between 1954 and 1965 we gave Pakistan military aid worth nearly $2 billion by way of hundreds of tanks—about 700—artillery pieces, around 20 squadrons of F–86 sabre jets and F–104 aircraft and a variety of other equipment. In addition, we gave Pakistan twice as much per capita economic assistance as we gave to India. And what did this ally do for us? Where did it join in fighting anti-Communist battles? In 1968, it forced us rather unceremoniously to close down the only facility it had given us, the U–2 base in Peshawar.

I make no comment at this time, but it appears to me that the attitude of Pakistan toward our efforts to reconcile the Mideast situation has been far from helpful.

Today, the leaders of Pakistan openly proclaim that they visualize no threat from the Soviet Union or from China. Pakistan is getting arms from both. In other words, China and Russia are repeating our folly in Pakistan. But there is no reason for us to emulate them and repeat our own follies.

India has repeatedly offered assurances and pledges that it will never attack Pakistan. There is no reason for us to add to Pakistan's very considerable existing military strength and aggravate India's suspicions and fears. That country is faced with a hostile nuclear power—China. Any U.S. decision to supply arms to Pakistan on any scale is bound to generate not only an arms race on the subcontinent and force both India and Pakistan to divert their much-needed resources from the tasks of economic development but also to subject the Indian Government to internal pressures for securing atomic weapons.

This decision is most untimely in the context of internal developments in Pakistan. On the eve of long-promised elections in that country political parties will construe it as demonstration of this country's solidarity with the current military regime. The decision appears unfortunate from another angle also. It has the appearance of being contrary to the Nixon doctrine which in the subcontinent can only mean that we keep out of the internal affairs of either country and also keep aloof from their bilateral problems and quarrels and not add to existing tensions.

In the light of all these considerations I urge the administration to rescind this unwise decision and to revert to the 1965 policy of total ban on the supply of arms to either of these two countries. We must cease being arms merchant to the world.

I ask unanimous consent to have printed in the RECORD two editorials about the decision of our Government to sell arms to Pakistan, published in the New York Times and the Baltimore Sun of Sunday, October 11, 1970. I also ask unanimous consent that the news article from the Washington Post of Oct. 8, 1970, be printed in the RECORD.

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

[From the New York Times, Oct. 11, 1970]

ARMS FOR PAKISTAN

As if it did not already have enough trouble trying to defuse perilous international conflicts in the Middle East and Southeast Asia, the United States Government is—incredibly—adding fuel to another potentially explosive situation in South Asia. The State Department confirms the report that this country has decided to sell arms to Pakistan in what a spokesman describes as "a limited exception" to the prudent arms embargo that was imposed on both India and Pakistan after their 1965 war.

This "exception" in fact represents a major break in the embargo, far more serious than modifications made in 1967 when it was decided to sell spare parts to the Pakistanis and to make available non-lethal equipment to both sides. Although the department denies that tanks will be included in the proposed arms deal, it does not dispute reports that armed personnel carriers, fighter planes, and bombers are involved. The spokesman explained that Pakistan felt disadvantaged by the embargo, even as modified, because most of its military equipment prior to 1965 was of American manufacture.

What the department failed to note was that the Pakistanis have been receiving arms from both the Soviet Union and China in recent years and are engaged in an arms race with India that is forcing both countries to divert desperately needed resources from domestic development. Additional American arms aid to Pakistan will not promote the security of Pakistan or stability in the area. Rather it will encourage India to seek further arms assistance, probably from the Soviet Union. It may even swing the balance in India to those who have been pressing for an Indian nuclear force, a development that would have repercussions far beyond South Asia.

Instead of selling more arms to the Pakistanis—or to the Indians, for that matter—the United States should be employing its resources to help reverse the downward trend in economic assistance to the area in order to counteract the appalling poverty that increasingly threatens the stability of both countries. If Communism is at last to gain an upper hand in either place, it is more likely to result from internal causes than from any influence Moscow and Peking might gain through their own short-sighted arms deals.

Instead of arming either side for another round of conflict. the United States should be using all its diplomatic energies to try to resolve the divisive issues—Kashmir and India's Farakka Barrage on the Ganges—that threaten to engulf the subcontinent once more in fratricidal war. Arming friendly powers to fight their own battles may be sound doctrine in some cases, but it hardly makes sense for the United States to arm friends to fight each other.

[From the Baltimore Sun, Oct. 11, 1970]

ARMS TO PAKISTAN

India's quick and vigorous protest against a reported Washington decision to sell new arms to Pakistan was altogether to be expected. The Ministry of External Affairs in New Delhi calls this a transaction in "lethal arms", and if the reports are accurate so it is: they mention, besides armored personnel carriers, 18 supersonic interceptors and 7 Canberra bombers.

The State Department refers to the sale offer as a "limited exception" to the general embargo imposed on arms sales to India or Pakistan at the time of the 1965 war—adjusted in 1967 to allow both countries to buy nonlethal items such as spare parts for weapons previously supplied, transport and medical and communications material.

The American position, which seems to accept the Pakistani argument that India has access to its own and Soviet arms sources while Pakistan must depend solely on the United States, is that the new supplies will not upset the military balance in South Asia. India is said to have been so assured.

But India remembers American assurances before 1965 that arms supplied to Pakistan would not be used against India, as of course in the event they were; and New Delhi knows, if Washington still does not, that fear of India is the first and dominant reason for Pakistan's wanting to be effectively armed.

Even granted that these new arms are hardly massive, there are certain conditions Washington might have considered more carefully before offering them. One is the fact that we do not know accurately what the temper of the present Pakistani government is, much less what the temper of Pakistan may be after the elections scheduled later in the year. Another is the probability that Prime Minister Gandhi's rightist-militant opponents will now try to increase their pressure on her for the fabrication of nuclear weapons. The situation in South Asia is dangerous enough, without that.

[From the Washington Post, Oct. 8, 1970]

UNITED STATES AGREES TO SELL ARMS TO PAKISTANIS

(By A. D. Horne)

The United States has agreed to sell arms to Pakistan for the first time since the 1965 Kashmir war, State Department officials said yesterday.

Informed sources said the major items involved included 300 armored personnel carriers, 18 F–104A Starfighter supersonic interceptors and seven B–57 Canberra bombers. The sources said the administration had placed a ceiling of about $15 million on the total to be sold, but cautioned that the figures could be held down by listing equipment as "excess"—that is, marked down to 25 or 30 per cent of original cost.

The State Department officials would not confirm either the total value or the kind of arms involved. They stressed that the sale offer was "a limited exception" to the general arms embargo which they said remains in effect for both India and Pakistan.

As adjusted in April 1967, the embargo allows both countries to buy nonlethal items such as transport, medical and communications equipment plus spare parts for weapons previously supplied.

Pakistan has pressed the United States to lift the embargo, arguing that its armed forces were heavily dependent on American arms while India had its own and Soviet sources. India, and American ambassadors to India, have argued against ending the embargo.

Most of the public debate on the issue in the past three years has centered on Pakistan's attempt to buy 200 M–48 medium tanks. The Johnson administration tried to arrange an indirect sale of 100 such tanks through various third countries, without success.

The present decision, officials insisted, does not involve any tanks.

PHILADELPHIA CHOSEN TO DEMONSTRATE SENATOR SCOTT'S CREDIT UNION LEGISLATION

Mr. SCOTT. Mr. President, I am pleased to announce the success of my efforts and those of the Philadelphia Housing Authority and the residents advisory board to have Philadelphia's James Weldon Johnson Apartments selected as one of the six sites for a demonstration program to bring Federal credit union services to low-income areas. This demonstration implements the intent of S. 2259, my bill to allow Federal funding of new credit unions in poverty areas, which I introduced on May 27, 1969.

The purposes of my bill and this demonstration program are to encourage savings and provide access to credit for low-income persons, and bring consumer education into poverty areas. The residents of the James Weldon Johnson Apartments, a public housing site, will have for the first time savings and borrowing services available through their own credit union. I expect in the future all citizens living in public housing in Philadelphia to be eligible for this program.

The immediate objective of this program is to train a cadre of residents to organize, operate, and manage a Federal credit union which they will own and control. The long-range objective is to demonstrate the potential benefits and feasibility of establishing credit unions in public housing throughout the Nation and to prove that credit unions are particularly well suited to provide the leadership required to meet two social objectives of public housing—strengthened financial self-sufficiency of residents and expanded participation of residents in public housing affairs.

The demonstration program is being funded by the United States Department of Housing and Urban Development—HUD—through a grant awarded to the National Association of Housing and Urban Development Officals—NAHRO—which will conduct the program in collaboration with the National Credit Union Administration—NCUA.

The NCUA, formerly the Bureau of Federal Credit Unions under the Department of Health, Education, and Welfare and now an independent agency, will design and implement a training program and provide technical assistance. This week, four residents of the James Weldon Johnson Apartments will be selected for training and one of them will be employed for the next 18 months to manage the credit union.

NAHRO will be the liaison between NCUA and HUD and will prepare and publish a report on the project which can be used as a basis for establishing similar programs throughout the Nation. Passage of my bill would facilitate establishment of such new credit unions by Federal funding. This Federal financial support would become unnecessary as the credit unions become self-sufficient. At the present time, it is estimated that nationally less than 1 percent of all public housing residents have needed credit union services available in any form.

I believe that anyone who supports the idea of being pulled up by one's own bootstraps should be intrigued by the credit union operation in ghetto and poverty-ridden neighborhoods. Credit unions are owned and operated by their members, and are a means by which such neighborhoods can stretch incomes and provide local employment opportunity.

I am pleased that the Federal Government has agreed to implement my proposal. I not only wholeheartedly support this demonstration of the value of the services uniquely provided by credit unions in all low-income neighborhoods. I know that the authority provided by my bill will speed up the availability of saving and borrowing service in poverty areas.

OCCUPATIONAL SAFETY AND HEALTH BILL

Mr. BAYH. Mr. President, the Senate will soon consider a bill which could literally mean the difference between life and death to America's 80 million civilian working men and women. I wish to express my wholehearted endorsement of the Occupational Safety and Health Act, S. 2193, which would help to end the tragic waste of life and limb in our workplaces.

It is a shameful fact that in this country 2.2 million workers are maimed, disabled, or otherwise injured annually on the job, and another 14,500 die through job-related accidents and illnesses. Moreover, over 250 million mandays of work are lost through job disability. It is estimated that the annual loss to the gross national product because of industrial accidents totals $8 billion. Even more important than these statistics is the tragic effect on the lives of the families which have endured these unfortunate accidents. In only 4 years as many people die because of their employment as have been killed in almost a decade of American involvement in Vietnam.

National attention quite properly has been focused recently on environmental problems—the pollution of air and water and the destruction of other natural resources. However, this concern with the "environmental crisis" fails to give sufficient recognition to the pertinent question of occupational safety and health. Our environment consists not solely of the air we breathe traveling to and from work or the water we drink. Not to be overlooked is the air we breathe at work, 8 or more hours daily. As the Labor and Public Welfare Committee concluded in its report:

The distinction between occupational and non-occupational illness is growing increasingly difficult to define.

This on-the-job pollution crisis is one of the most important issues in the whole environmental question. It is from the workplace that much of the complex problem of pollution arises. To pass legislation dealing with dirty air spewing forth from smokestacks without simultaneously seeking solutions to the contaminated environment inside the factory makes little sense. Just as the Senate has already acted to insure clean air and water to protect our families and children, there is a concomitant obligation to pass S. 2193 in order to provide a salutary environment inside our factories and/or agricultural facilities.

Collected in 1,790 pages of 13 volumes of hearings held by the Labor Subcommittee are the gruesome statistics of accidents and the shocking facts of lack of adequate protective legislation on both State and Federal levels. The problem of occupational illness continues to be one of the greatest problems facing industrial society. It is estimated by the Public Health Service that there are approximately 390,000 new occurrences each year of occupational disease. These include such diseases as byssinosis and asbestosis which are contracted directly as a result of industrial environment. Indirectly linked to similar causes are such chronic diseases as respiratory illness, allergies, and heart disease. Agricultural casualties have also been heavy. For example, the Migratory Labor Subcommittee reported an estimated 80,000 injuries and 800 deaths each year attributed to the improper use of some pesticides.

On the other hand it has been reported by the Industrial Union Department, AFL–CIO, that there are only 1,600 State safety inspectors in the United States to check on occupational hazards. Other sources indicate that there are fewer than 100 Federal inspectors. This would mean that fish and game wardens outnumber safety inspectors by 2 to 1.

The Senate of the United States cannot let another day pass—a day in which 55 more American workers will die, 8,500 will be disabled and 27,200 will be injured—without enacting the comprehensive job safety bill, S. 2193, sponsored by the distinguished junior Senator from New Jersey (Mr. WILLIAMS).

I am cognizant that there are economic issues involved in the question of industrial safety, including costs of protective devices, possible conversion or changes in production techniques, and training in use of new safety measures. I am equally aware that opponents of this bill fear it could be arbitrarily applied by the Secretary of Labor and seek substitute legislation to dilute his authority.

These opponents have suggested that a separate board should be established to promulgate the required health and safety standards. Also, they advocate an independent panel to carry out the enforcement provisions of the act. However, this would tend to divide the responsibility for administration and enforcement. It would create more agencies and dilute the power of the Secretary of Labor in this area. For this reason it is very important that the same person who carries out the day to day administration of the program should be the same person in charge of enforcing it.

S. 2193 is a most carefully drafted bill, based on a lengthy hearing record and on considerable deliberations by both the Senate Labor Subcommittee and the Committee on Labor and Public Welfare. It provides adequate safeguards for all parties through the Administrative Procedure Act and the courts to guarantee equitable and reasonable action by the Secretary of Labor with regard to employers while also insuring that standards would be promulgated and enforced to end this job-related carnage.

In the 1890's Congress first acted to protect railroad workers through safety legislation. Since then, legislation on State and Federal levels has been only piecemeal, arising chiefly as the result of some tragedy of national proportions, such as the garment industry fire in New York City in 1911 when 146 women burned or plunged to their deaths, or the 1968 coal mine disaster in Farmington, W. Va., when the lives of 78 miners were snuffed out.

The Federal Government clearly has the responsibility to insure safe and healthful working conditions to workers engaged in interstate commerce. The Senate can, through passage of S. 2193, immediately move to help protect 55 million employees in interstate commerce activities; and through the cooperation of Federal, State, and municipal government agencies under provisions of the act, another 12 million workers could be covered. The standards promulgated under S. 2193 will be a model for use by the remainder of the work force, the self-employed, or those not engaged in interstate commerce.

Surely, the appalling bloodletting in American workplaces must weigh heavily on the conscience of the American people. The Senate should act now so that the needless loss of life and limb can be effectively reduced.

PRESERVATION OF NETWORK NEWS PROGRAMS

Mr. BAKER. Mr. President, on April 15 of this year I introduced S. 3720, a bill that would provide for the taping and preservation by the Library of Congress of network evening news programs. Daily newspapers and most periodicals are preserved on microfilm; it is certain to be a matter of deep regret to future generations of scholars that television news reporting is not similarly preserved.

In a speech to the Radio and Television News Directors Association meeting at Denver on September 25, the distinguished Chairman of the Federal Communications Commission, Dean Burch, generously endorsed the proposal and urged that it be adopted. I hope that it will be adopted, if not in this Congress, then early in the next one.

Mr. President, I ask unanimous consent that Mr. Burch's speech be printed in the RECORD.

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

ADDRESS BY DEAN BURCH, CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION, BEFORE THE RADIO & TELEVISION NEWS DIRECTORS ASSOCIATION

The most appropriate subject for an FCC speaker at this annual meeting, I've been informed, is a kind of "State of the Fairness Doctrine" speech. You are all necessarily interested in the important developments in this area—in any new trends. I will therefore talk briefly about fairness developments, about a suggestion for your consideration, and then open the floor for questions.

First, my suggestion—and it really constitutes a compliment to the importance of electronic journalism.

I call your attention to S. 3720, Senator Baker's bill to provide that the Librarian of Congress shall obtain and preserve nationally televised evening news programs and such other nationally televised programs as the Librarian determines to be of substantial public interest. In Senator Baker's apt words, "the purpose of the proposal is to insure that the national evening news programs, a unique record of the historic events of our time, will not be forever lost to the country."

The Senator has pointed out that while the Library keeps on file either copies or microfilm of every edition of all great newspapers and magazines in the country, no such record is kept on what appears nightly to 40 million Americans on the national TV news programs.

In August of 1968, Vanderbilt University in Nashville began compiling videotapes of the evening news telecasts of the three major television networks. The University also began taping occasional special news programs. Vanderbilt did this, because there was no permanent preservation anywhere in the country of these news telecasts, not even by the networks themselves.

The country was thus losing forever this record of the events of our time as well as a prime source for research by historians, political scientists, and other scholars. A primary objective of Vanderbilt is to demonstrate that a national agency could and should take over the task.

The Library of Congress is clearly the appropriate agency, and just as clearly, the cost of the program should be borne by the Federal Government. The Library has proposed a cost estimate indicating an initial equipment cost of $250,000 and an additional annual cost of $162,000, for taping and indexing so that the material is readily available to scholars.

I strongly commend Vanderbilt and Senator Baker for their efforts. I believe that it is most appropriate for this organization to do all it can to support this proposal of Senator Baker. I would urge you not just to adopt a resolution, but to really give it your enthusiastic and continuing support.

On the "State of the Fairness Doctrine", our recent fairness decisions attracted much attention. While these decisions involved a matter of the greatest importance—the Indo-China War issue, our substance decisions followed established "fairness" principles.

First, we made clear what I have always felt—that the fairness doctrine is really a misnomer. A layman would undoubtedly feel that if some person got 30 minutes to speak on some issue, it is only "fair" that a spokesman for the other side also get 30 minutes in the same time period. Thus, from such a lay viewpoint, "fairness" would always entaile "equal opportunities." but our recent decisions stress that this is not the thrust of the fairness doctrine, as developed by the Commission and codified in the law in Section 315. The fairness doctrine does not require equality but reasonableness—that in the circumstances there has been "reasonable opportunity for the discussion of conflecting viewpoints on controversial issues of public importance" (Section 315 (a)).

We explained why the licensee *is* afforded so much discretion under the fairness doctrine. In our judgment, based on decades of experience in this field, this is the only sound way to proceed as a general policy. The equal opportunities approach would simply not be workable in the field of controversial issues. It would inhibit, rather than promote, the discussion of controversial issues. For, it is just not practicable to require equality with respect to the large number of issues dealt with in a great variety of programs on a daily and continuing basis.

Further, it would involve the FCC much too deeply in broadcast journalism. We would indeed become virtually a part of the broadcasting "fourth estate," overseeing thousands of complaints that some issue had not been given "equal treatment." We held that the profound national commitment to the principle that debate on public issues should be "uninhibited, robust, wide-open" (*New York Times Co.* v. *Sullivan,* 376 U.S. 254, 270) would not be promoted by a general policy of requiring equal treatment on all such issues, with governmental intervention to insure such mathematical equality.

On the above basis, we denied the complaints that requested equal time for some spokesman to answer the President whenever he used broadcast facilities. The President clearly should resort to broadcasting to make appropriate reports to the nation. So also, to their particular constituencies—do Governors, Mayors, city managers and so on. If every such report automatically gave rise to an equal opportunities situation, we would really have changed the fairness doctrine to "equal opportunities," and that would be neither sound law or policy. So we held that all that is required under the fairness doctrine is that reasonable opportunity be afforded for the discussion of the contrasting viewpoints.

Our decisions then turned on the specific facts of each complaint.

In the case of the complaint from Senator Dole and ten other Senators, we found that NBC was reasonably affording an opportunity for the presentation of the differing viewpoints on the so-called "Amendment to End the War." It had extensively represented the Administration viewpoint on the Indo-China War issue, had already given three leading spokesmen an opportunity to express their opposition to the "Amendment," and had continuing plans to cover the debate on the "Amendment."

On the other hand, we did require the networks to afford some further time for an uninterrupted speech by an appropriate spokesman to be selected *by them,* so as to respond to the President's five prime time speeches on the Indo-China War issue. We pointed to the unusual facts here—that there had been extensive but roughly balanced representation on each side of the issue and five opportunities in prime time for the President to address the nation on this issue.

We also directed CBS to offer time to the Republican National Committee because of the time which was given the Democratic National Committee. The essence of our holding here was that the time given the DNC was "party-oriented" rather than "issue-oriented" because it was given without any specification of the issues to be covered. It was simply bestowed to allow the DNC to present its views, and while that is of course perfectly proper, we stated that fairness required that the RNC be given a similar opportunity.

There was a second group of rulings—dealing with the question of right of access to the broadcast media—which are also of great importance to this Association. Had we ruled differently, your role as a broadcast journalist would have been profoundly affected, and in a way not at all to your liking. I feel that many of you do not at all appreciate rulings which the Commission makes to preserve and promote broadcast journalism—that you too often focus on matters which you find disagreeable and ignore any favorable actions.

I would point out that the arguments made to us by the DNC and others were not without some force. They pointed out that many people have access to broadcasting to advertise soap, brassieres, cars—why shouldn't there be a *right* of access, to broadcasting by all responsible entities for the far more important matter of informing the electorate on public issues?

Nevertheless, we rejected the claim of the DNC and others that the broadcast licensee must sell time to discuss public issues to any responsible group that comes to him. We pointed out that the DNC position runs counter to the statutory language and the legislative history. That history shows that Congress specifically debated and rejected the idea of the licensee being required to act as a common carrier with respect to transmission of comment on public issues. The Communications Act reflects this. One section (3(h)) states that a broadcaster shall not be regarded as a common carrier. Another section (315(a)) sets out *the* standard here—that the licensee must operate in the public interest and must afford reasonable opportunity for the discussion of conflicting viewpoints on controversial issues of public importance.

There are strong policy arguments in support of the Congressional scheme. Under the common carrier access approach urged by DNC and others, the result could well be a chaotic situation which would be analgous to radio's early days. Since the broadcast medium is a limited one, the amount of time to be devoted to public affairs—as against the other needs and interests of listeners—is also limited. This balance between the categories could be drastically skewed by a requirement that the broadcaster must make available time slots for the discussion of a controversial issue.

Further, the public's agenda for discussion of public issues would then be set substantially and increasingly by the affluent—by the person or group which ". . . has the financial resources and interest to purchase sustained access to the mass communications media . . ." (*Banzhaf* v. *F.C.C.*, 405 F. 2d 1082 (C.A.D.C., 1968), *cert. den.* 396 U.S. 842).

Since the amount of broadcast time for discussion of controversial issues is limited and since the licensee must afford reasonable opportunity for discussion of both sides, the purchase of substantial blocks of time for a campaign by a group on some issue would impose the burden to present reasonably the other viewpoint, and in turn would inevitably cut down on the amount of time for discussion of other issues. But we believe that such allocations of limited time are to be made on the basis of the *public* interest—not that of any private group, however powerful or affluent.

The broadcaster would also lose control over the important aspect of the manner in which the public is to be informed. A licensee which reasonably made the judgment that an issue was too complex to be discussed in a 30-second commercial—that "hawking" the issue like a soap did not serve the public interest—would find that judgment frustrated by the DNC policy. It would be required to sell the spots and ordered to make time available to opponents on a similar basis.

As I said, a contrary ruling by us would have profoundly and adversely affected you as broadcast journalists. Your agenda of issues, and how those issues would be covered, would be set by others—by groups with money.

At the same time, we stressed the broadcaster's duty to devote a reasonable amount of time to public issues and to do so fairly. The most basic consideration here is that the broadcaster cannot rule off the air coverage of important issues or views because of his private ends or beliefs. As a public trustee, he must present representative community views and voices on controversial issues which are of importance to his listeners. This means also that some of the voices must be partisan. A licensee policy of excluding partisan voices and always itself presenting views in a bland, inoffensive manner would run counter to the "profound national commitment" that I spoke of—that "debate on public issues should be uninhibited, robust, and wide-open." (*New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964)).

This, we believe, is the teaching of the *Red Lion* case. To echo the Commission's long established doctrine in the Editorializing Report:

"It is this right of the public to be informed, rather than any right on the part of the government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting."

You thus have considerable discretion—but with this freedom, as with all freedoms, comes great responsibility.

Finally, we have adhered to the principles set forth in the important rulings, the *Democratic National Convention case*[1] and *Hunger in America*.[2] We will not investigate charges that some news has been slanted or staged in the absence of extrinsic evidence that the licensee or management has deliberately done so. We have stressed that we are not the national arbiter of the truth—that for the FCC to attempt to authenticate the news would involve us in a quagmire wholly inconsistent with the underlying policy of the First Amendment.

But while we have made clear in these cases and our *Judy Collins* ruling that we shall carefully avoid the censor's role, this does not mean that your operation should be immune from criticism from appropriate sources. On the contrary, all institutions, the FCC, the Congress, the Executive *and you*—benefit from scrutiny and criticism of how well they are performing their role.

Indeed, I would commend to you the recent action of the Washington Post, which has assigned an experienced journalist, Mr. Richard Harwood, to be an "inside" critic. While that is of course no substitute for the outside analysis also needed, it may prove to be a valuable complement.

In a recent article in the Post,[3] Mr. Harwood stated:

"It would be foolish and untrue for journalists to claim that they alone among men are without sin, that their standards of taste are necessarily and always the best standards or that they are as evenhanded as automations in all their work. Journalism is no exact science. Mistakes are made, biases crop up and judgments are often wrong."

I agree with his candidness. All I can do is to urge the obvious: That while it is true that mistakes will be made and biases may out on occasion, you must strive for the best possible record of integrity. The nation depends on the media *fairly* to illumine the issues. When the media's light flickers or is distorted, shadows lengthen over all of us.

Truly, then, you—above all—must "rage, rage against the dying of the light." Faith in the integrity of the press is one of the linch-pins of the republic. Every act of deliberate distortion—in some senseless race for ratings—diminishes not just your profession or broadcasting, but the nation.

Let me wrap up this "State of the Fairness Doctrine." It's still the same old doctrine. It affords you wide latitude on issues, viewpoints, spokesmen and so on. The FCC gets into the act only upon complaint, and only to review whether you have acted reasonably—not to substitute our judgment for yours.

We have heard suggestions that we should lay down more definitive guidelines on virtually all aspects of the doctrine. We have of course set out some. But in the main we rely upon the "reasonableness" test—that is, reasonable opportunity for the contrasting viewpoints in the circumstances. It is really like the "reasonable man" test in a negligence case. Its hard to devise a better standard, because everything comes down to reasonable action in the particular factual situation, and the facts of a negligence case can vary almost infinitely. As you know, the same thing is true in fairness cases.

The fact that your judgment can be reviewed for reasonableness upon a proper complaint is certainly no excuse to avoid controversial issue programming. We weight your judgment, and upset it only if we find it arbitrary—not because we would have done something different if we were the journalist. Our past actions show this, and I predict that our future actions will bear this out.

Finally, we've stressed that an honest mistake of judgment doesn't in the least place your license in jeopardy. But I'll tell you what will place your license in jeopardy—and that is to avoid controversial issue programming because you have to be fair if you engage in it. We've allocated so much spectrum space to broadcasting because of the contribution it can make to informing the electorate on public issues. Broadcasting doesn't merit all that spectrum simply as a conduit for entertainment programming to sell deodorants. You people in this room—you broadcast journalists—represent the best, the most important aspect of broadcasting.

Someone said, "What you don't know today, can kill you." That is becoming more and more true, in this age of mercury or DDT pollution. You gentlemen have the task of warring against this ignorance—of informing the electorate so that the nation can act, wisely and in time. There is no more vital and important undertaking in America. I wish you well and pledge that I will do my utmost to help you.

[1] 16 FCC at 650 (1969).

[2] 20 FCC 2d 143, 150 (1969).

[3] The Washington Post, September 15, 1970, p. A20.

THE 100TH BIRTHDAY ANNIVERSARY OF MRS. WILLIAM E. BORAH

Mr. JORDAN of Idaho. Mr. President, the late Senator Arthur Vandenberg called him "the greatest man I ever knew, greater than any President under whom he served." He was also called "the only effective minority." To him was attributed "the venturesome idealism of Idaho," and the New York Times, January 20, 1940, solemnly affirmed that "he wears no man's collar. He is even a statesman. But, especially, he is the conscience of his party; its prodding nerve; its accusing angel which refuses to forget or ignore or compromise. He is, in fact, Borah, vocal and unique."

From 1907 to 1940 he served in this Chamber as U.S. Senator and Idaho's ambassador to the world. Will Rogers, humorist and keen observer of humanity, often referred to him as "Prime Minister Borah."

He was the sponsor of legislation creating the Department of Labor and a Constitutional amendment for the election of Senators by popular vote. He was

totally dedicated to world peace, for reduction of all armaments and against entangling alliances. He heavily criticized the League of Nations and the World Court among those alliances and fought for the right of the United States to determine its own world policy, unhindered by collective world forums. The 1922 Disarmament Conference in Washington was his creation, one of his finest hours.

It was written of him in July of 1934:

Borah always knows precisely where he stands. Alone.

Mr. President, today I stand before this body to pay tribute to his memory and his greatness, and to the woman who rode beside him when "Senator Borah rode alone."

On October 17 of this year Mrs. William E.—Mary—Borah, widow of the late Senator, will be 100 years of age. Her life has been as full and rich and rewarding as anyone I have known. She was his constant companion throughout his 33 years as Senator. She was known as "a celebrated Washington hostess" and described as having "ambulent, inquisitive curiosity." She was named "Little Borah" by her contemporaries out of respect for the life which she forged for the Senator and herself.

Her father was Idaho's first U.S. Senator and its third Governor. It was during the latter that she left the general store and home in Moscow to be with him in Boise as hostess and part-time secretary. She even wrote speeches for him. Her acquaintanceship with "Billie" Borah began with these campaigns of her father when the young Borah worked vigorously for Senator McConnell's election. Upon entering the statehouse, Governor McConnell appointed the young lawyer, William E. Borah, as an administrative assistant. Shortly after, in 1895, Bill and Mary Borah were married, spending their honeymoon after a long train ride in Caldwell, Idaho. Throughout their life in Washington, she was his contact with society.

The New York Times noted that—

Formal society bored him and he seldom dined out. His carelessness in dress was long a subject of complaint by Mrs. Borah who objected to his dilapidated hats and unpressed baggy clothes. "Why, only today," he once said in defense to his wife, "I was complimented by a Senator on being the best dressed man in the Senate." "Yes, and I know who that Senator was. It was Senator Gore," retorted Mrs. Borah, referring to the blind Senator from Oklahoma.

When she moved a few years ago from her Washington residence to her present home in Oregon, she sold more than 3,000 elephants which she had collected during her years in Washington. For, in spite of the many differences which the Senator so vigorously voiced with the leaders of his own party, he was indeed a Republican.

It was in no small measure due to the courage and love on her part that the Senator was able to stand with what the U.S. News, May 28, 1934, called "a sincerity so deep and so obvious that it can be read in your every word and deed."

The greatest tribute which I could pay to Mrs. Borah today in honor of her 100th birthday and in reverence for the memory of this "serious, intense, and lonely statesman" would be to echo the words of the Christian Science Monitor:

In answer to the question what's he ever done for Idaho? . . . the answer is: He has given the nation and the human race honest, intelligent service based on the highest ideals and purposes, backed by uncompromising courage and an understanding heart—and in the name of Idaho. What more could any State ask ever of one of its public servants? High up among the winter-whitened, serrated ridges of Idaho's tiptoed mountains there is one higher than the others, a little aloof from them perhaps. It is as spotlessly white as the massed white of the springtime blossoms along the banks of the Potomac in Washington—blossoms Borah loved. The great mountain of pure white which will awaken to the call of each succeeding spring forever is the very heart of Idaho. The mountain's name is—fittingly—Borah.

Mr. President, I ask unanimous consent that an article entitled "The Lamp Is Still Lit," published in the Lewiston Morning Tribune, October 4, 1970, be printed in the RECORD.

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

MARY BORAH AT 100: THE LAMP IS STILL LIT

(By Suzanne Taylor)

Mary McConnell Borah told me, "One thing I've learned after living a hundred years is that every man is different but husbands are all alike."

In her 100th year, Mrs. Borah, the widow of a senator and the daughter of a senator and governor, has lost none of the charm and wit that made her a favorite of the Washington social scene for many years. The wife of the powerful and famous Sen. William E. Borah of Idaho was highly regarded in her own right and much sought after as a guest by presidents and potentates.

Her husband died in 1940 after 33 years in the Senate. Her father, William J. McConnell of Moscow, served in the Senate before Borah went there and later returned to Idaho to become the state's third governor, serving from 1893 to '97.

As for Mrs. Borah, "as of now I seem to have earned the title of Methuselah. But please don't ask my rules for reaching such an astonishing age, for I assure you I have none. I have never partaken of the grain, the grape or the weed, but many who have reached the century mark plus agree that they have always smoked, imbibed and frolicked about, so this abstemious record perhaps is not all the reason I'm still here."

Is Mary Borah confined to her bed? Not so you could notice. She is up every day and still her very elegant small self. The day of our interview she was dressed in a smartly cut, high neck beige wool dress with a jeweled sweater over her shoulders.

"I'm frequently a forerunner of the latest style," she smiled demurely, "I am now wearing the new maxi length. In fact, I wore it before I realized it was the maxi length."

Mary Borah believes that destiny ordained that she be in the public domain from birth, and recalled that as an infant in arms her grandmother had taken her to Portland for medical attention. As she carried the baby from the train they were followed by a mother who had lost her child and whose mind, as a result, was disturbed.

Grandmother laid baby Mary on the bed in the hotel and retired to the bathroom, leaving the door half open into the hall. "In those innocent times of the west," Mrs. Borah remarked, "locking a door was simply unheard of. Imagine then my grandmother's horror when she returned very shortly and found little me had disappeared.

"Of course she ran screaming into the lobby where, fortunately, people had noticed a young woman hurrying through the hotel door with a baby in her arms. I was shortly rescued and became a front page item before I was six months old.

"Naturally, the fact that my father was a very important political figure in Idaho may have had something to do with the interest of the reporters."

"So many people have always believed that I was born in Moscow, Idaho, that I have almost come to believe it myself. However, 100 years ago, I was born in Arcata, Calif. My parents had crossed the plains in early Oregon days and after meeting fell in love and were married in Salem in 1866. Mother's maiden name was Louisa Brown. Other of the children were born in Oregon and in Idaho, where my family moved.

"There were five of us, two boys and three girls. I have one living sister, Ollie M. Leuderman, who is ill in the same retirement home I occupy. Ollie is in her late 90s . . . but one must never tell a lady's real age until she is at least a hundred and can be proud of herself."

A murmur of surprise at her memory caused "Little Borah" to remark, "If I launch myself on a subject of interest to me. I find I have almost total recall. If not . . . well, then I'm not always too clever."

"As a child growing up," she said. "father was concerned with working toward Idaho's statehood and this was accomplished when I was 21. Of course women did not have the vote then and the 19th Amendment was only a gleam in a suffragette's eye."

"However," she reflected, "the women in a candidate's family had a definite role to play. Certainly the wives did not go out on the hustings with their mates, but they were called upon to get up endless meals and serve at endless suppers, luncheons, teas and receptions, and when any of the candidates came to town the McConnell house was open to them, rather like a hotel, for no one then had too much money to campaign with."

"The new women's lib?" she remarked, "It's just an extension of women's urge to become full citizens no matter how. You know the senator never voted for the suffrage amendment because he considered it unconstitutional. Personally, I think women should have equal employment opportunities and pay commensurate with their ability, the same as men. To paraphrase Animal Farm, "Every one is equal, only men are more equal than women."

How did she and Senator Borah meet?

"It was during one of my father's campaigns that an up-and-coming young lawyer from Boise, W. E. Borah, came to help out. My mother introduced us at a reception and after that he came quite often to Moscow—why, I have no idea as it was a very long and expensive trip from Boise to Moscow in those days.

"Later, when father returned from Washington, D.C., after a year in the Senate, he helped father win his election as the third governor of Idaho.

"Because mother was in rather delicate health, and very shy about meeting new people, father decided to take me along to Boise as his hostess and part-time secretary.

"I was very much surprised and pleased to find that Billy Borah was one of the administrative assistants in the governor's office.

"Most of our courtship took place on horseback and we often rode together in the hills. I always loved parties and gaiety, but even then Billy was very very serious and a student who preferred his quiet study to attending the social events of the capital. Boise, then, as now, was noted for its social life.

"My student—political admirer and I were married on April 21, 1895, at the Cyrus Jacobses'. I understand that little old house is still standing. It must be faintly historical by this time, but will probably be knocked down for a parking lot.

"When after some disappointing campaigns, Billy was elected U.S. senator for Idaho in 1907, my wonderful years in Washington began.

"I have given so many interviews of my Washington social life and the famous persons who became my friends and associates that I think people who do not know me believe I did nothing but rush from one social event to another."

But it wasn't all parties and fun, she recalled.

"During World War I, when shell shocked soldiers and others mentally disturbed by the horrors of war were brought to St. Elizabeth's in Washington for treatment, I, with others who had been deep in Red Cross and war work, became constant visitors at this mental hospital in an attempt to bring back reality to our boys.

"Finally I had a serious attack of nervous exhaustion and my doctor ordered me back to Idaho for a rest.

"People who still recall, probably think I was always a person of robust health. Far from it. I had some very close brushes with death during my life. One, especially, when I was in Boise with my husband during one of his campaigns. All at once I came down with a mysterious illness accompanied by a burning fever. The doctors could do nothing. Then a close friend, the Boise merchant C. C. Anderson, remembered that one could catch a terrible fever from parrots. It was called psittacosis, and at his insistance serum was flown from Brazil. I was dying. Anything was to be tried.

"After the injection, the nurses told me how Billy had ordered every one from my room, as the doctors gave me only a few hours to live. Then he fell on his knees by my bed and prayed aloud to God to let me live. They said his prayers were so moving during his long night of watching that they would always remember them. In the morning I started to mend."

She laughed and said, "After that I had to get rid of my dear parrots and only kept my canaries.

"My life has been so full and complex I have taken little time to think of myself and therefore I became 100 years old without particularly noticing it.

"I accept my situation as the will of the Great Creator who may intend that my years may be of some inspiration to those who feel that aging is a calamity and that after 30 the lights go out . . . they really don't, you know. The evening of life brings its own lamps."

AUTHORITARIAN ALLIES

Mr. CHURCH. Mr. President, many of America's worldwide allies are authoritarian societies. What South Vietnam, South Korea, Taiwan, Ethiopia, Pakistan, Greece, Spain, Brazil, the Dominican Republic, and others all have in common is totalitarianism heavily subsidized by the United States. Commenting on this peculiar attribute of American foreign policy, columnist "R.J.B." of the North Idaho Press recently wrote:

It is strange, too, that this nation, not yet 200 years old, which grew out of a bitter revolutionary war, does not realize that revolution, peaceful or otherwise, is the only means by which oppressed peoples have an opportunity to gain some of the ambitions our forefathers had when they wrote the Declaration of Independence.

He continues:

And as a result, in our fear of Communism, we spend money, and sometimes the lives of our young men, to help, directly or indirectly, keep them oppressed.

When we pour our money and men into the full-fledged support of notoriously authoritarian governments, intelligent Americans, who still believe in the professed ideals of our Nation, question the spirit behind foreign policy decisions; inevitably the U.S. Government is unable to explain this contradictory situation to its own people, both young and old. What is necessary, therefore, is for America to devise a role for itself in this world consistent, as R.J.B. suggests, with the admirable ideals of our forefathers. This would go a long way toward restoring our country to the unique position it once held in the community of man.

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

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

STREAM OF THOUGHT

(By R. J. B.)

South Vietnam Vice President Nyguyen Coa Ky "is the smybol of everything wrong" in South Vietnam, says Rep. William S. Broomfield, R-Mich., ranking Republican on the House Foreign Affairs Far East Subcommittee.

Ky plans to attend a "march for victory" rally in Washington, D.C., Oct. 3, and the administration has made it clear it would prefer he not visit the United States.

Broomfield opposes Ky's plans to visit the United States. If Ky carries through, his visit is certain to spark new anti-war protests.

Perhaps it would be well if Ky did visit the United States, for he is a symbol not just of Vietnam, but most of what is wrong in our foreign policy—not just this administration's foreign policy, but the continuing national foreign policy for several decades.

Largely as a result of our foreign policy mistakes—due principally to a lack of vision—we leave the dissatisfied peoples of undeveloped or underdeveloped peoples of the world nowhere to turn except to Communism.

It is strange that we do, when we have fought in two World Wars to "make the world safe for democracy," and when our form of free government and free enterprise offers the greatest hope for the development and stabilization of the poorer nations of the world.

It is strange, too, that this nation, not yet 200 years old, which grew out of a bitter revolutionary war, does not realize that revolution, peaceful or otherwise, is the only means by which oppressed peoples have an opportunity to gain some of the ambitions our forefathers had when they wrote the Declaration of Independence.

Instead of understanding the legitimate aspirations of these millions of struggling people, we have poured billions upon billions of dollars into countries with the aim of "fighting Communism," but in reality to maintain corrupt, oppressive and dictatorial governments.

The people living under such tyrants want freedom and economic growth—legitimate aspirations. They are ready to fight and die for such goals, which is legitimate. They cry out, for leadership to help them gain their ideals, but the only leadership they are offered comes from the Communist nations.

And as a result, in our fear of Communism, we spend money, and sometimes the lives of our young men, to help, directly or indirectly, keep them oppressed.

Our men fought and died in South Korea, but the government that we support now in South Korea is not free and we still must maintain 50,000 men to protect that country.

The people of Indochina endured years of French colonial rule, and understandably fought to rid themselves of that yoke. Under President Eisenhower, we seriously considered intervening on the side of the French, and then watched as the government of South Vietnam deteriorated into a more oppressive one than the French rule.

The people of Cuba, after generations of oppression, revolted against dictatorship which we supported, and now have a Communist dictatorship more onerous than the one Battista gave them.

We cannot be proud of the dictatorship in Cuba that existed before Fidel Castro took over, nor the dictatorships that have oppressed peoples in other nations in this hemisphere south of the border.

And because we have offered the victims of these dictatorships little—but the dictators much—the people of Chile have turned to the Communist, giving him the plurality in the presidential election.

The people of Greece suffered under a dictatorial junta, and we resume arms shipments to those who oppress the Greeks. Not because the Greek government is free, but because the mass of Greeks, getting support from nowhere else, show sympathy with the philosophy of Communism.

We are not saying this nation should actively promote revolution or "wars of national liberation" in oppressed countries as Russia and Red China do.

We are saying that when people are oppressed and want freedom, they turn to Communism and we do not promote our brand of freedom. Communism promises much, and delivers nothing but more slavery, but the ignorant natives in poor nations are not given much choice if they rise up against oppression.

That is why we are losing the cold war. Oppressed peoples are not inspired by support of men such as Ky.

We hope Ky visits the United States, and that Americans take a good hard look at his Character. Maybe then, we'll take a good hard look at the direction our foreign policy has taken the past several decades.

AIR FORCE TASKS FOR THE 1970'S

Mr. HANSEN. Mr. President, I had the pleasure this past weekend of hearing an excellent speech delivered by the Honorable Robert Seamans, Jr., Secretary of the Air Force, to attendants at the National Board banquet of the Civil Air Patrol.

We are living in an era when more public attention than ever before is concentrated on the policies and administrative practices of our Government with regard to national defense. Much that is distorted has been said and written about our defense posture and our role in today's world.

Secretary Seamans did an excellent job of outlining in terms no one could misunderstand the general goals of President Nixon with respect to the U.S. role throughout the world, and his plans for maintaining the defensive capability of this Nation.

I found the Secretary's address refreshing in its directness and enlightening in its no-nonsense approach.

So that other Senators might know what he said, I ask unanimous consent that the entire speech be printed in the RECORD.

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

AIR FORCE TASKS FOR THE 1970'S

The Air Force and the Civil Air Patrol have historically shared both an interest in flying and a desire to serve the people of

the United States. We in the Air Force are proud of the fine services rendered by the CAP. I noted yesterday that since January 1968, your search and rescue missions have saved 134 lives. You do this job so well that it is almost taken for granted by the country as a whole. Corpus Christi doesn't take you for granted, however; citizens there will long remember your prompt response to the Hurricane Celia disaster.

Just a few days ago Secretary Laird received a letter concerning Celia from Mr. Robert M. Pierpont, National Director of Disaster Services, American Red Cross. I'd like to read you that letter.

"Dear Mr. Secretary: For some time the American Red Cross Disaster Services and the Civil Air Patrol have coordinated on operational plans resulting in bringing service to disaster victims. The areas of principal cooperation have been transportation, aerial survey, food drops, and communications.

"As an example, immediately after Hurricane Celia, at a time when normal communications were disrupted, CAP provided the only means of communication into the Corpus Christi area. This was of inestimable value to the Red Cross.

"I wanted to mention this to you and express our appreciation for the excellent service provided by this organization and the fine cooperation provided by them to us.

"They have assisted in making our responsibilities at time of disaster easier. We appreciate this kind of cooperation.

"Yours respectfully, Robert M. Pierpont."

Although your humanitarian work has become a sort of CAP trademark, I feel that this impression tends to obscure an equally valuable program of developing youth into community conscious citizens. CAP is doing the country a great service with many of its cadet programs. The recently initiated POW/MIA campaign, the Spiritual Life Conferences, the Nurse Orientation Course, and the International Air Cadet Exchange are good examples. Through these activities cadets are involved in the kind of learning that's aimed at service to the community and at compassionate understanding of our fellow men. I'd like to single out the 23 year old international air cadet exchange for special mention. The 204 cadets from 25 countries and the 201 U.S. cadets, who participated in this program during 1970, have received an invaluable lesson in international goodwill, understanding, and fellowship through their common interest in aviation.

CAP's more technically oriented courses have been an important factor in increasing national interest in aviation and in contributing to the development of aviation talent. Our latest figures show that about 200 of the cadets entering the Air Force Academy this year had received training or motivation from the CAP. ROTC and enlistment figures also show the positive influence of the Civil Air Patrol.

Knowing the Air Force and its auxiliary share an interest in both aviation and national security, tonight I plan to sketch out for you some of the problems which face the aerospace team in the decade ahead.

In the twenty months since President Nixon took office there has been a more or less continuing examination of both domestic and national security policy. Federal agencies and special commissions have conducted detailed studies of our many domestic needs, while the National Security Council continues to reassess our defense policies and priorities.

During his February 18th message to Congress on U.S. Foreign Policy for the 1970's, the President outlined the defensive nature of our strategic posture, namely, ". . . to deny other countries the ability to impose their will on the United States and its allies. . . ." He also restated the salient points of the Nixon Doctrine dealing with our assistance to foreign countries. The essence of the doctrine is that the United States will continue to honor its treaty commitments. We will provide a nuclear shield and will furnish economic and advisory aid but will look to the threatened nation to assume the primary role in providing the manpower for defense. This will be a period of transition in which we must make the arrangements that will sustain us for the long-haul. Together, these policy statements provide the foundation for Vietnamization and our measured withdrawal from Vietnam, for the SALT talks, and for our future military posture.

Although we are still in a transitional stage in moving toward these new policies, there is a dual trend that is already clearly established: defense spending will be decreased and the armed forces will be reduced in size. Already total military strength has been cut by one-half million men since it reached its peak in mid-1968. By the end of the current fiscal year we will reduce the number of DOD personnel assigned to headquarters activities by 13,000. The latter cut represents a 15% change or roughly one man in seven.

To some extent the budget and manpower policies represent two faces of the same coin. The direct manpower cost of a 2.6 million man force in 1965 was under $14 billion. The military pay for a force of equal size today would be $29 billion. The difference represents both inflation and necessary pay raises. As Secretary Laird put it, ". . . manpower costs have really eaten up the so-called peace dividend."

For our part, we in the Air Force are fully alive to the vital domestic needs which place increasing demands on the national budget, and we intend to assist in meeting those needs wherever possible. We recognize that reducing defense expenditures frees resources and helps to curb inflation. However, as we strive to move from an era of confrontation to one of negotiation, we must not lose sight of the worldwide military picture. There are clearly identifiable threats to U.S. interests. The Soviet Union currently possesses powerful and sophisticated strategic forces which in some cases exceed ours in numbers and capability.

President Nixon, speaking at the Air Force Academy last year, placed the country's competing requirements in perspective when he said:

"The aggressors of this world are not going to give the United States a period of grace in which to put our domestic house in order. . . . The most successful solutions . . . for our domestic programs will be meaningless if we are not around to enjoy them.

"Let us not, then, pose a false choice between meeting our responsibilities abroad and meeting the needs of our people at home. We shall meet both or we shall meet neither."

In the field of strategic weapons, we hope to arrive at an effective arms limitation agreement with the Soviets in the SALT negotiations. But at the same time, we must have the forces that will deter a strategic attack during the next five to ten years.

Two developments increase my concern in this regard: first, the increased numbers and total payload of Soviet ICBMs, and second, the Soviet deployment of an initial ABM system and continued extensive ABM research. The combined effect could be a considerable reduction in the effectiveness of both our land- and sea-based missiles. We are deploying ABM protection for our missile fields and strengthening the penetration capability of our missiles with the deployment of MIRV. But in the future, the effectiveness of our missile forces will tend to vary, depending upon the length of time it takes us to respond to new Soviet capabilities. Thus, there would be an inherent risk if deterrence were dependent on missiles alone, since a single technological breakthrough could operate against both missile systems.

To use a very rough analogy, two legs of a three-legged stool, do not give us the same stability, even if greatly strengthened and enlarged. A dispersed manned bomber force, having quicky reaction, is that third leg. It might be possible to undermine the effectiveness of either missiles or bombers alone, but to counter both at the same time would be a vastly more difficult problem. We must retain this stabilizing capability for the indefinite future. The B–1 gives us an improved system to do the job and represents the most economically feasible means to achieve this end. It is simply cheaper to replace the B–52 than to modify it and update it indefinitely. Given the decade of lead time involved, we must expedite the development of this aircraft. We have awarded contracts for development of the airframe and engines. The decisions will be made at a later date on production of the aircraft and development of its avionics package.

In addition to preserving strategic deterrence, we must maintain effective tactical forces. Tactical airpower is an essential factor in our ability to meet our treaty obligations and thus deter local war.

With respect to air superiority, skill and determination can only go so far in compensating for an aging system. Soviet fighter development since 1960 has been characterized by the frequent appearance of new and improved models. The extent of this trend was illustrated in the 1967 air show when the Soviets, at one time, introduced more new prototype fighters than the United States has developed in the last ten years. To insure that we can hold the lead in air-to-air combat in the 1970s, the Air Force plans to develop the F–15 fighter. We have negotiated a development contract which calls for 20 test aircraft, one wing of fighters, and options for two follow-on wings. Actual procurement money for the F–15, as contrasted to R&D money, will be budgeted in the future.

In other areas of tactical concern, we must continue to provide effective forces. For this purpose, we are working on a survivable attack plane known as the AX. Since this system will be relatively low in cost, we are going to build two prototypes. Early next year two contractors will be selected, and each will build two airframes for a fly-before-buy competition.

If economy were a watchword in the past, it will be a way of life in the future. Everything from pencils to planes will have to pass a cost and requirement test; nice-to-have office supplies or aircraft systems will become a thing of the past.

Better management will be the hallmark of our service. We have a number of programs already well along in this area. Among these are, decentralized decision making, use of a "milestones" or step-by-step approach to system development, reduced reliance on paper studies and more realistic cost-estimating.

Looking at the structure of the Air Force, it will be leaner, more mobile, more streamlined, and better equipped. When I visited Tactical Air Command Headquarters earlier this week, I was given a picture of what mobility is today and what it may have to exceed tomorrow. In the forty days since September 1st, the United States Air Force will have deployed or redeployed 358 tactical aircraft across the Atlantic or Pacific. Eleven B–57s, 96 F–100s and 156 F–4s were involved. Ninety-six of the F–4s, which are NATO committed, were rotated to Germany and back from their dual-basing homes in Idaho and New Mexico. In support of these movements, 1100 tanker sorties off-loaded over 5 million gallons of jet fuel. These deployments, completed without accident or major incident, provide a graphic illustration of the USAF's potential for worldwide reaction.

In the future the Air Force will depend more heavily on the Air National Guard and the Air Force Reserve, regarding them as an

integral part of our total force in addressing requirements. The policy recognizes that in many instances the lower peacetime cost of reserve forces, compared to active units, results in equal forces for less money. Reserve forces modernization is an essential element of this new policy. Secretary Laird has indicated that future budgets will provide "the necessary resources to permit the appropriate balance in the development of Active, Guard, and Reserve forces."

I think you can appreciate the great challenge facing the Air Force in the 1970's. I see little prospect that the path we tread will be an easy one, but it is by no means impossible.

To facilitate our progress and expose the pitfalls and snags—we need better communications with the American public. The military threat must be clearly understood, as well as the Air Force role in national defense.

This is not a particularly easy order. But if the people, through the Congress, are going to approve necessary new weapon systems, they will have to have a much better understanding of our requirements than in the past.

Between the Air Force and public there are no more important links than those civilians who understand the aerospace environment. Fortunately, we have some 74,000 of you that are members of the Civil Air Patrol and who have made it your business to gain this understanding. Further, as civilians you enjoy the confidence of your neighbors and can explain the problems in terms readily acceptable to them.

With the help of our many citizen airmen in the Air Force Reserve, the Air National Guard, the Air Force Association and the Civil Air Patrol, the Air Force's problems in the 1970's can be explained to the American people. And we welcome the scrutiny of our programs by an informed public.

We of the Air Force are proud of our association with the Civil Air Patrol. I know it is a partnership that will be no less vital or firm as we enter the 1970's. On behalf of the Air Force thank you for your support.

BANKING AND AGRICULTURE—THE BIG GET BIGGER AND THE SMALL GET PROBLEMS

Mr. SYMINGTON. Mr. President, despite the serious and growing economic problems of most Americans, in the Wall Street Journal of October 6, a headline reads that the profits of one of our most famous banking houses "Jumped Over 33% In The Third Period"; and on October 8 the same newspaper reported that the profits of New York's two largest commercial banking institutions increased 14.1 and 37.1 percent respectively.

One of my prominent agriculture constituents reports that recently he offered $1.36 per bushel on 17,00 bushels of Government corn stored in county bin sites in his area; but he was told the price had to be $1.44½ per bushel.

Later he found that the same corn was sold to a large grain buying corporation for $1.32.

I ask unanimous consent that the letter to me, dated October 9, from this respected and responsible farmer be printed at the end of my remarks.

I call special attention to the last paragraph of Mr. Quinn's letter, which reads as follows:

I am not asking that the local feeder have an opportunity to buy this grain any cheaper than anyone else, but I believe he should have a fair chance to buy it.

Every Senator will agree with his position in this matter.

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

MAYWOOD, MO.,
October 9, 1970.

Senator STUART SYMINGTON,
Washington, D.C.

DEAR SIR: On October 5, I wrote you a letter about the method used for selling government corn stored in county bin sites.

In my letter I referred to a quantity of No. 4 corn that I made a bid on. At that time I made a bid of $1.36 on approximately 17,000 bu. of this corn. I was told the corn had to bring $1.44½ per bushel.

All of the corn stored, about 35,000 bu., in the Lewis County Bin Site was sold yesterday for $1.32, to a large grain buying corporation. The market has changed very little since I bid on this corn. I was notified of this sale but because of unforeseen conditions I was unable to go to Monticello yesterday to make a bid.

There are several things that disturb me about this. As I stated before, when corn is to be sold out of the county bin sites, Local farmers should have first chance to buy it. I cannot understand why, when there is to be grain sold from the county bin sites that it could not be advertised in the local papers. Everyone should know when this grain is to be sold, not just a few.

Because of the lack of blight resistant seed corn for next year, it is possible there will be a short corn crop next year. In case of a grain shortage next year, the livestock feeder would be at the mercy of the large grain dealers.

There is something very wrong when apparently the large grain buying companies know more about the selling and pricing of government grain than the local A.S.C. Office. I think our local office does a good job, but the state and federal offices seem to have some very bad practices.

I am not asking that the local feeder have an opportunity to buy this grain any cheaper than anyone else, but I believe he should have a fair chance to buy it.

Sincerely,

WILLIAM R. QUINN.

REFORMS OF THE NEW FEDERALISM

Mr. BAKER. Mr. President, in the minds of many Americans the Republican Party and the Nixon administration are elements of our national society resisting change. Nothing could be less accurate. Although the President and his advisers do not seek to effect change in our institutions for the sake of change, the administration has recommended many fundamental shifts in domestic policy that have languished in the present Congress.

Many of these proposed reforms are part of the general ocncept of decentralization termed by the President "the New Federalism." Many begin to wonder whether the Federal Government is capable of returning any portion of its own swollen power to the States and to the people. There are grounds for such a doubt.

It is my strong hope—and that of the President—that next year some of the administration's recommendations for institutional reform can be given meaningful consideration by the 92d Congress. As sponsor of the President's revenue-sharing proposals—S. 2948—I have a particular interest in that aspect of the New Federalism.

One of the most bright and able architects of the new programs is Richard P. Nathan, now an assistant director of the new Office of Management and Budget. The New York Times of October 10, 1970, contains a column by Mr. Nathan on the reforms of the New Federalism. It is a thoughtful piece of writing. I ask unanimous consent that it be printed in the RECORD.

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

REFORMS OF THE NEW FEDERALISM

(By Richard P. Nathan)

President Nixon comes to office at a time when many Americans are frustrated that their governmental institutions are not working properly. This frustration is grounded in concerns (often legitimate) that old-line public agencies lack direction and imagination; that urban decay is all too often exacerbated by governmental efforts; that programs for the poor are badly designed, inequitable, and frequently promote dependency; and finally that the present scatter-shot pattern of Federal aid programs sows confusion and reaps disappointment.

Such complaints are not limited to the young. Little noted in the press, there has been a quiet groundswell of informed opinion over the past decade that our governmental machinery for domestic affairs is in need of overhaul.

It is in this context that President Nixon said in October, 1969, that the "watchword" of his Administration would be "reform." Many of the reforms he has advanced have strong bipartisan support from members of Congress, mayors, and governors.

The heart of the domestic policy reforms of the Nixon Administration is the re-establishment of political values of American federalism—tolerance of diversity, flexibility in public problem-solving, capacity for innovation and change, and broad participation in the political process.

President Nixon's approach to domestic reform has been summarized under the phrase, "the New Federalism." This approach has three essential elements: (1) to sort out and clarify governmental responsibilities among levels of government; (2) to improve the performance of those tasks which clearly belong to the central government; and (3) to strengthen the capacity of state and local governments in functional areas in which decision-making and administration are primarily their responsibility.

The $4 billion Family Assistance Act (keystone of the New Federalism) fits comfortably into this framework. So does revenue sharing ($5 billion a year in five years) and the Administration's proposed comprehensive manpower act.

These three proposals were contained in President Nixon's August 8, 1969, address to the nation on domestic policy when his New Federalism approach was first announced. Writing about the President's speech shortly afterwards, the *London Economist* compared it in significance with President Roosevelt's first proposals for a social security system in the mid 1930's.

Welfare is an area in which a stronger role for the central government is clearly appropriate. Over the past three decades, centralization of the income maintenance function has occurred in all of the major federal systems in the world. The spillover effect of poverty across state lines and the economies from administering welfare with the aid of modern data processing technology are major reasons for this realignment of functions.

The other two proposals in the August, 1969, address—revenue sharing and the comprehensive manpower act—are designed to enhance the leadership capacity of state and local governments.

The Federal Government is in the best position to equitably and efficiently transfer resources for the support of individuals, as under Social Security and welfare. But service (functions like education, manpower, family services) are much more complex. They vary with local conditions and needs. While Federal financial assistance is, and should be, provided for service programs, primary responsibility for their *design* and *administration* cannot be lodged in Washington. The Administration's objective in many service program areas has been to bring about "responsible decentralization."

Management reform at the Federal level is another key element of the New Federalism; it is required to achieve the Administration's substantive reform and decentralization policies.

The Domestic Council and the Office of Management and Budget have been established to enhance the capacity of the Executive Branch to formulate major purposes intelligently. The entire management of the existing $28-billion of Federal aids to states and localities is being overhauled.

Taken together, the substantive reforms of the Nixon Administration (such as the income strategy and revenue sharing) and its managerial initiatives constitute a broad redirection of domestic policy.

The significance of the Administration's domestic policy is not only that it charts new directions. It also involves a substantial commitment of resources. In their first five years of effect, the Administration's welfare reform, food stamp, and revenue sharing proposals are designed to channel $45 billion into meeting the stubborn problems of the poor and alleviating the fiscal crunch on state and local government.

OUR VANISHING WILDERNESS

Mr. NELSON. Mr. President, last night, October 11, public television stations across the Nation carried a tragic but beautifully filmed account of man's destruction of wildlife.

The program explained how man's use of pesticides has dangerously upset the balance of nature. It showed, as one example, a flock of brown pelicans that cannot reproduce because pesticides in the fish the pelicans eat have made their eggshells too thin to be hatched.

The program was the first in an eight-part series entitled "Our Vanishing Wilderness." The series was created by naturalists Shelly and Mary Louise Grossman and John N. Hamlet. It was carefully researched over a 6-year period—and then filmed in the wilderness The result is magnificent photography—remarkable scenes of animals in their natural state—and an accurate, detailed report of America's needless destruction of nature. "Our Vanishing Wilderness" is produced by National Educational Television and carried over the nationwide noncommercial television network, the Public Broadcasting Service. PBS, let me add, is funded in large measure by Congress through the Corporation for Public Broadcasting and—if "Our Vanishing Wilderness" is a good example of the quality of PBS programing—I believe it is money well spent.

The second segment of "Our Vanishing Wilderness" describes the systematic destruction of wildlife on the Great Plains. I am particularly interested in this segment because it reports on the decline of the black-footed ferret, an endangered animal we should take steps to protect. In the near future I will be introducing legislation in the U.S. Senate to establish a national policy and program with respect to wild predatory mammals, including the black-footed ferret. We must begin to recognize the value of these predatory animals and put an end to their destruction.

In the following 8 weeks, the color cameras of "Our Vanishing Wilderness" will take public television viewers to Alaska and California, to Nevada and to Florida, and to other spots across the United States. Each program probes a different aspect of man's senseless destruction of nature.

The third segment examines the proposed Alaskan oil pipeline and its probable damaging effects on the ecology of the frozen tundra.

The fourth segment chronicles how man has all but destroyed the once plentiful wildlife in and around Pyramid Lake, Nev.

The fifth program reveals how the famed Florida Everglades are in danger of being lost to wildlife because of the destruction of nature in the name of "progress."

In the sixth segment, "Our Vanishing Wilderness" looks at the offshore oil leak near Santa Barbara, Calif.

The seventh program in the series examines the fight to save New Mexico's Sangre de Cristo Mountains from commercial logging interests.

And the final program in the series examines new trends toward more intelligent use of the earth's natural environment.

The beginning air dates for the NET series, "Our Vanishing Wilderness," on Public Broadcasting Service stations throughout the country were:

Beginning Air Dates for Our Vanishing Wilderness:

October 11 at 7:30 p.m. Austin, Texas KLRN, Brookings, S.D. KESD, Chicago, Ill. WTTW, Dallas, Texas KERA, Des Moines, Iowa KDIN, Fargo, N.D. KFME, Houston, Texas KUHT, Kansas City, Kans. KCSD, Lincoln, Nebr. KUON, Lubbock, Texas KTXT, Memphis, Tenn. WKNO, Milwaukee, Wis. WMVS, Nashville, Tenn. WDCN, Oklahoma City, Okla. KETA, Rapid City, S.D. KBHE, Topeka, Kans. KTWU, Tucson, Ariz. KUAT.

October 11 at 8:30 p.m. Albuquerque, N.M. KNME, Baltimore, Maryland WMPB, Bethlehem, Pa. WLVT, Bloomington, Indiana WTIU, Boston, Mass. WGBH, Bowling Green, Ohio WBGU, Buffalo, N.Y. WNED, Cincinnati, Ohio WCET, Cleveland, Ohio WVIZ, Denver, Colorado KRMA, Erie, Pa. WOLN, Gainesville, Florida WUFT, Hartford, Conn. WEDH, Hershey, Pa. WITF, Las Vegas, Nevada KLVX, Maine ETV.

New York City WNDT, Philadelphia, Pa. WHYY, Portland, Oregon KOAP, Pullman, Wash. KWSU, Redding, Calif. KIXE, Richmond, Va. WCVE, Roanoke, Va. WBRA, Rochester, N.Y. WXXI, Salt Lake City, Utah KVED, San Bernardino, Calif. KVCR, San Diego, Calif. KEBS, Scranton, Pa. WVIA, Seattle, Wash. KCTS, Spokane, Wash. KSPS, South Carolina ETV, Syracuse, N.Y. WCNY, Tacoma, Wash. KTPS, Tallahassee, Florida WFSU, Toledo, Ohio WGTE, University Park, Pa. WPSK, Washington, D.C. WETA.

Different Air Dates and Times, October 11 at 6:30 p.m. Madison, Wis. WHA.

October 11 at 8:00 p.m. Durham, N.H. WENH.

October 11 at 8:30 p.m. Athens, Ga. WGTV.

October 11 at 9:00 p.m. Los Angeles, Calif. KCET.

October 12 at 6:30 p.m. San Francisco, Calif. KQED.

October 15 at 6:00 p.m. University Center, Mich. WUCM.

October 15 at 7:00 p.m. Detroit, Michigan WTVS.

October 18 at 10:30 p.m. Jackson, Miss. WMAA.

October 20 at 7:30 p.m. central. Little Rock, Ark. KETS.

October 22 at 8:00 p.m. Huntington, W. Va. WMUL.

October 25 at 4 p.m. East Lansing, Mich. WMSB.

November 1 at 8:30 p.m. Morgantown, W. Va. WWVU.

Check your local paper for beginning air dates on these stations.

The initial program of this eight-part series was entitled "Of Broccoli and Pelicans and Celery and Seals." The remaining seven shows will be:

October 18—The Prairie Killers.

October 25—Prudhoe Bay—or Bust.

November 1—Slow Death of the Desert Water.

November 8—Will the Gator Glades Survive?

November 15—Santa Barbara—Everybody's Mistake.

November 22—The Water is so Clear that A Blind Man Can See.

November 29—The Charmed Life.

In approximately 3 months, the videotapes of each of this excellent series will be suitably converted by the University of Indiana to 16-millimeter sound film and made available to schools, educational institutions, and public service organizations at a modest rental cost—or as a permanent copy for the library—for use in classroom and group discussion. For further information on obtaining a copy of this series, inquiries should be communicated directly to the Audio-Visual Department of the University of Indiana, Bloomington, Ind. 47401.

I sincerely hope that every American will have a chance to see this important series.

And it is even more important that each of us will be moved to stop the terrible destruction of wildlife this series reveals.

THE VICE PRESIDENT AND THE STUDENTS

Mr. HANSEN. Mr. President, on September 25, Vice President AGNEW met with a group of five student critics on The David Frost Show.

During the 90-minute debate which ensued, crime, student protest, Vietnam, and a number of other relevant topics were rather fully discussed in this most interesting and meaningful discussion.

Mr. President, in view of the fact that some Senators may not have had the opportunity to see the show, I ask unanimous consent that the complete text of the remarks made during the program be printed in the RECORD. It should be of real interest to all of us.

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

AGNEW'S TALK WITH FIVE STUDENTS FULL TEXT OF A 90-MINUTE DEBATE

What is bothering student dissenters? Why do they find fault with the nation's leadership?

How does a top U.S. official feel about student unrest—and campus disorders?

In a remarkable "confrontation," Vice President Spiro T. Agnew and student critics explored these and other questions that reflect the deep divisions in U.S. life today.

Mr. FROST. We've got a very special program for you today—the Vice President in debate with college critics of the Administration, starting right now.

Thank you very much indeed and welcome to this special—very special—edition of "The David Frost Show."

The story so far—how it came about, this particular program: It followed on—we very much wanted to do a follow-up after the last program we did with Vice President Agnew, which there was a tremendous response to. The Vice President himself wanted to debate with students and we suggested a format in which he might like to do so. Here to introduce the theater and the audience to those of you at home—here we have an invited little-theater audience right here. We don't claim that it is in any way an amazing Gallup Poll cross section of the country, with exactly 1.7 trade-unionists and so on. It is simply a group of 200 to 250 people here in the little theater. They are friends of the Administration and friends of the students, critics of both and undecideds. We know that up in the balcony there we have our friends, the gentlemen of the press. We know that here in our front row we have five students who, along with the four students who are going to join me in a moment on stage, we have to say, in the cause of full disclosure I think is the word, that they are receiving reasonable expenses and no payment.

As to how the students—incidentally, I'd like to say that we want all of our audience, and particularly the five in the front, to join in later on in the program.

Right now, as to how the four students who are going to join me, and the five in the front row—the nine—were selected: Let me say that, obviously, with 7 million students to choose from in this country, it was a somewhat difficult task. So we agreed with the White House that we would, in fact, choose presidents of student bodies and as wide a geographical cross section across the country as possible.

At that point—I can't say, in fact, firmly enough—that at that point the White House, the Vice President's office, the Vice President, and so on, neither took any part nor tried to take any part in the selection of the students. They knew that they were going to be student critics of the Administration. And we, at the same time, didn't feel qualified to make a sort of random choice ourselves, and so we spoke with various people. We spoke with editors of student newspapers across the country, asking them for names of students who were both critics and articulate spokesmen for the college community. We put the same question to leaders of various campus political organizations and to officers of the National Student Association. And so it is on that basis I would like you to welcome both the five students who are with us in the front row, and would you welcome now the four who are going to join us on stage.

Very good to have you all with us. Let me just introduce each of you by name, starting with you, Greg Craig, who is in his second year at Yale law school and has been student-council president of Harvard. Is that correct, Greg?

Mr. CRAIG. That's right.

Mr. FROST. Welcome; very good to have you with us.

Next, Rick Silverman, from the University of Washington, who is writing a thesis on urban violence, worked for VISTA [Volunteers in Service to America] and has worked also as a tomato picker—is that right?

Mr. SILVERMAN. That's right.

Mr. FROST. Eva, welcome—Eva Jefferson, from Northwestern, who testified before the Scranton Commission on Campus Unrest, and is majoring in political science—is that right?

Miss JEFFERSON. That's right.

Mr. FROST. And Steve Bright, from the University of Kentucky, who is a political-science major. Is that right?

Mr. BRIGHT. True.

Mr. FROST. Terrific, and we welcome all four of you. We are delighted to have you with us.

And right now it is a privilege to welcome the Vice President of the United States, Spiro T. Agnew.

Mr. Vice President, I am sure people would like to know, why did you particularly want to have a debate with student critics, and so on.

Mr. AGNEW. Well, David, I don't know whether I'd call it a debate. In effect, it will be a discussion, not a formal debate. I hope we can communicate more readily than that format. But what I wanted to do is have a chance to sit down with some of the students who obviously have not really understood what I am saying, and who I think could benefit by hearing a little more expansion of my views. And I think the converse is true. I think there is much about what they are saying that I read secondhand, and maybe it will help my understanding to talk with them. Perhaps, as happens in any exchange, we will move closer together. That's what my hope is for this meeting.

Mr. FROST. What is your own main memory of your student days, in fact, Mr. Vice President?

Mr. AGNEW. I think the thing about college that most people truly enjoy is the stimulus of having one's intellect brought into sharp focus, not so much in the formal classes but in the exchanges that you go through with people who are part of your college community. You seem to have—to discover together that there are things you have been talking about that you have thought about a long time but they sort of come into being as you discuss them. It's the intellectual stimulation of college that I found most engrossing.

Mr. FROST. The first question, Greg?

Mr. CRAIG. I have a question for the Vice President.

At the beginning of your campaign for this year, Mr. Vice President, you pointed out that the theme of this campaign would be that policies should be made by the elected officials of this country rather than by the people in the streets. But in the last three weeks you have chosen to defame some of the most respected and distinguished public servants in American life today—elected by the people from States such as South Dakota, Tennessee, Arkansas.

I think it's been regrettable that you have chosen to attack personalities rather than problems, that you have not addressed yourself to some of the really central issues that are facing American society today.

My hope would be for this program that we can talk about those kinds of problems rather than slandering established and respected public servants, that we can talk about the policies that you think might solve some of the problems that we are facing as a nation today, because we can't afford the kind of emotionalism and clouding of reason through rhetoric today. And my comment would be why—my question would be: Why have you chosen this route at a time more than ever before when we need unity as a nation—not necessarily unity, but we need some kind of civilized discourse of issues?

Mr. AGNEW. Well, Greg, I think that I agree with you 100 per cent that what we need is civilized discourse, because that is what I am really trying to reach for. And in discussing these individuals, as I have done during the campaign, you may notice that I have never unilaterally raised their names. It's always been in response to something they have said. It is something I think that demonstrates their unfitness to hold the offices that they hold.

Now, the political climate has to be adversary. That's our system. How else will our people make up their minds about whose judgments they want to follow unless we have an adversary climate?

But what is unusual to me is that it seems as though my rhetoric is always called into question, and yet the rhetoric of others who impugn my motives and my philosophy is never called into question. There are many examples of this.

When I was running for Vice President, a very respected public servant of the persuasion that you mentioned had some very unkind things to say about me. He said I was a two-bit hack politician or a fourth-rate hack politician. I didn't see any of the editors or the columnists flying into orbit over this insult. So, it's a two-way street. We have to have an adversary climate. I'm willing to discuss what I believe in. My speeches, if you read them, do discuss it very candidly.

Mr. CRAIG: The adversary system, though, is based on an issue—on a problem—and in the course of the last three weeks, in all of the reports that I have seen of your speeches, I have not seen you address yourself seriously to any of the serious problems that are confronting the society. For example, the health care that the society has got. We have the worst health care among all industrial nations in the world. Now, this seems to me a very important issue. The strength of our nation depends upon the health of our people. Why are we not talking about that?

Mr. AGNEW. Well, I'm not sure I agree with that conclusion that we have the worst health care of any industrialized society. This may be some pundit's opinion. But even if it is bad in comparison to our affluence, I think you would have to agree that President Nixon's programs are trying to do something about that. Take, for example, the money that's being spent in upgrading the present health-delivery systems—the administrative reforms that are trying to eliminate the waste in those systems. Take, for example, the program that is being worked on right now that will probably result in a national health-insurance system.

The point is that our improvements in these ways have come about over the last 50 years, and the thing I think that most adults resent most about the judgments of some of you young people who criticize us so violently is that you really don't understand what we have done in 50 years about health. You haven't had to grow up with polio or diphtheria, mainly because the people in my generation and the generation before have eliminated that. You haven't had to be hungry, you haven't had to be cold.

You have come into a period of affluence that has allowed you to have the time to think, principally because today a person works about one third as many hours as he used to have to work to make a living. This gives you more time to think, which we think is great. We want you to think. We want you to challenge, but don't deprecate and downgrade a society that has given you the tools to work with that you have.

Mr. FROST. Eva.

Miss JEFFERSON: Sir, I'd like to challenge that comment, if I may, and make an analogy to the business world, if I might.

If you had an employe who in the past years had done a good job, a very good job, but for the past, let's say, few years, had just completely broken down—not completely, you know, still kept up with some of his good works, but in the over-all perspective, was not doing an effective job—you wouldn't keep this person on. And you wouldn't say that in the past the things he had done were bad. You would give him credit for those,

but you'd either try to improve him and, you know, get him to do better things than what he's been doing in the past, or get someone else. And I think this is the type of attitude that young people have.

We realize, as you pointed out, that your generation—my parents—have given us economic security so we can address social problems. Yet it is offensive to me when it is inferred that we are not grateful or we don't appreciate the greatness that America has. I don't think anyone is saying that. We just want it to live up to its potential. And this is what bothers me about your statements. We realize that there are great things going on, but that's what you and President Nixon do—you verbalize these things. But we feel the responsibility to vocalize some of the problems of the country because this is what we feel. As you said, it's an adversary system, and we feel it is our duty to bring up some of the problems, and I don't think it's correct when you say we don't appreciate America.

Mr. AGNEW: Let me take brief exception to one thing you said. Much of what you said I find very encouraging, particularly in contrast with what you said to the Scranton Commission when you said the only way to get the attention of the society is to bomb buildings. But let me say this: I don't believe that it is possible to say that this society is broken down and is not continuing to respond to the problems.

Let me give you an example: In higher education this year we're spending about 8.6 billion dollars. That's—two years ago we were spending about 3.4 billions on higher education. Now, does that show a lack of interest or lack of effort on behalf of the Government?

Miss JEFFERSON. Could we examine what that money is going into? You talk of education—

Mr. AGNEW: It's going into federal assistance.

Miss JEFFERSON: What about the desegregation programs? I believe there is a widely acknowledged slowdown on the part of your Administration. I believe if anyone goes into any ghetto school you would not see a top-quality educational system.

Mr. AGNEW. Let me respond to that one thing. May I interrupt as you make the point to respond.

Mr. FROST. And then you must mention about the Scranton Commission.

Mr. AGNEW: Let me say this:

You say there is a slowdown on desegregation. Do you know that the number of black children attending integrated schools in the South this year will be 10 times more than it was two years ago? That's a figure.

Mr. SILVERMAN. May I respond, as you make your points?

Mr. AGNEW. Yes, indeed.

"GLOSSING OVER THE PUBLIC-RELATIONS SHIMMER"

Mr. SILVERMAN. There is an interesting article in "Playboy" this month, which seems to have come of age. And Tom Wicker, who is one of your ongoing critics and, I might suggest, one of the more sophisticated pundits in America, observes that the Administration statistics on desegregation are really the high point of your glossing over the public-relations shimmer of the Nixon regime. The point that Wicker makes, I think with some authority—and I think that people like Leon Panetta and dozens of other people within the Justice Department and HEW [Department of Health, Education and Welfare] who have left the Administration in protest have been making—is that you are really falsifying those statistics badly. And I suppose we can elaborate. I am somewhat concerned about doing this—

Mr. FROST. I think you should give us an example of what you mean.

Mr. SILVERMAN. The basic tool here is that the Administration has adopted some statistics which were based on integrating that is beyond a 50 per cent scale, and now, on the basis of statistics—I'm sorry, I don't have those at hand, what number of students would be involved—we find that the Administration is now listing for us as integrated students any student who is in a district which is nominally integrated. So that we have countless examples, dozens and dozens of examples of students attending all-black schools in what are being listed in the new federal guidelines—the new federal propaganda—as integrated schools. It is a farce.

Mr. FROST. Is that true, Mr. Vice President?

Mr. AGNEW. No. I take exception to it and I ask for the contravening figures. I don't see how you can make a statement off the top of your head, and as far as "glossing over a shimmer," that's a pretty hard thing to do in itself. That's not my Bible.

Mr. FROST. It's clear, either a change in the country or in "Playboy"—While you're searching for that, and we must obviously come back to that point, don't get waylaid on the way to finding that—

Mr. SILVERMAN. They are twins for the price of one issue—it's incredible.

Mr. FROST. Yes, amazing. Eva, the words that the Vice President quoted—were they the words that you said to the Scranton Commission? Did you endorse that point of view or were you describing a situation you saw?

Miss JEFFERSON. See, your attack on me in saying what was alleged that I said before the Scranton committee is an example of what Greg was talking about. Instead of looking beyond the personalities and into the issues, you just pick up on something that was alleged that I said. What I said, in fact, in front of the Scranton Commission was this—and I will give you my rationale for saying it:

I represent a student body at Northwestern University that has a cross section of people just as you represent a country that has a cross section of people. Among those students at the university are people who would be termed radicals or revolutionaries. I myself am not one of those students. If you would examine what I have done in the past you'd know that.

However, I feel honor bound to represent those people because they are part of my constituency. What I attempted to do before the Scranton committee was to explain what could motivate someone to blow up a building, and if you also examine what I have done—and I don't mean to be patting myself on the back—you will see that during our strike during May there was no violence on our campus. And I was part of the leadership of the strike "Students Help Prevent Violence."

What I did say, however, was examine the civil-rights movement in our country. Now, there was civil-rights legislation before the Congress. It was held up, slowed down. Some of it was coming out, but not fast enough. All of a sudden Watts blew up, Detroit blew up, and we saw the legislation coming out of Congress with much greater speed than it was before.

You notice that every time a black ghetto blows up, the mayor of a city all of a sudden decides it is now time for him to go down and investigate this ghetto and see what motivates people to act out like this. And what I am saying is, if someone studies a history of this country, which you would have to admit does have a lot of violence—the violence in Vietnam, the violence that has gone behind a lot of our social movements, and you would have to admit that. A person looking at that might be inclined to think the only way to move society is to blow up a building.

I did not say I endorsed this, and if you read my testimony quite carefully you'll know that I didn't. And it is this type of just picking up on what allegedly I said, instead of really studying what I said, that really disturbs me about your whole process of going about and talking around the country.

You're doing us a great disservice because you're making people afraid of their own children. The way you talk about students is as though they are people from another planet who were dropped down on college campuses with no more intention than to just blow up buildings and to destroy our society.

Yet they are your children, they are my parents' children and the children of this country. Yet you're making people afraid of them, and I think this is the greatest disservice. There is an honest difference of agreement on issues. But when you make people afraid of each other, you isolate people. Maybe this is your goal. But I think this could only have a disastrous effect on the country.

Mr. AGNEW. Let me say, first, that isolating people is not my goal. If that were true, I wouldn't be here tonight.

Miss JEFFERSON. Good.

Mr. AGNEW. Let me take exception to that oft-repeated rationale that violence is the only way to get results. You know and I know that the greatest result—the greatest progress that was made—was when the Supreme Court began to recognize this very difficult problem as far as public acceptability, but nonetheless did not shy away from the propriety of integration. And the Civil Rights Act of 1964 took place long before much of this violence occurred. In 1954 there was no violence when the Supreme Court made the historic Brown decision.

Miss JEFFERSON. Sir, if I may interrupt just for a second. Yet we are still in the process of desegregating schools. That's all I have to say.

Mr. AGNEW. Well, it is true, but we are in the process of accomplishing it, and we have recognized the impropriety of some of the discrimination that obviously took place and continues.

And let me make one thing completely clear to you: At a time when I was county executive of Baltimore County—this is a county with about a 3 per cent Negro population—I was one of those who successfully intervened in the Gwynn Oak Park dispute to see that the injustice done to black citizens of Baltimore who wanted to use that facility, even though it wasn't in Baltimore city proper—it was in Baltimore County—would have a right to do that.

I spoke out for open housing. I am not in any sense at all unsympathetic to the discrimination that has taken place. I want to help cure it. But to say that the way to bring about social change is even a tacit acceptance of violence is wrong.

And I read your testimony. I didn't go by the news reports. I read your testimony, and you did call for the impeachment of the President and you did—I don't know how you missed me—but you did also indicate that the only way to get results sometimes is violent conduct, and you just repeated that now as you pointed out these situations where things happen after there is violence. I say this is a poor rationale to get results.

Mr. FROST. But surely what you were saying, Eva, what you were saying was, in fact, that it seems to a tiny minority that that is the only way to make people listen, not "It is the only way I think results can be got." isn't it?

Miss JEFFERSON. I wish you would listen to what I am saying, because I have said two or three times that I am not in favor of violence. I have never participated in a violent act except at the Chicago "police convention," called the Democratic Convention, in which I was tear-gassed. I was trying to explain to you the rationale of some students who are openly revolutionary. Yet my trying to explain them you take for a position of advocacy. This is one of the problems.

You're not listening to what I am saying. I am really distressed.

Mr. AGNEW. What are you advocating?

Miss JEFFERSON. Sir, because I'm a student-body president, which in the context of the students is a very Established point of view, it is obvious that I am for working through the system. I have registered to vote. I don't intend to vote for candidates who are of your persuasion. This is my personal way of working through the system.

Now, I would have to go back to something you said, and I'm very disturbed that you said you read the testimony because maybe you got a different transcript than the one that I have presented. My comments on the impeachment of President Nixon were this: I gave an analysis of what I thought college students thought was wrong with the country. At the end I said, "What kind of recommendations do you think I should come up with? Do you think I should say you should impeach the President?" The room—oddly enough, filled with young people, all Government employes—broke into applause. Then I said, after that was over:

"But you see the problem goes much beyond one man. The problem is not just one man, because many people voted for this person. Now, that's why this recommendation would not be particularly good." I unfortunately left my transcript in my hotel room, but I could certainly have someone go get it if you would like to see the transcript, because that is exactly what I said.

Mr. AGNEW. Well, I wrote down one thing I extrapolated from the transcript, and I would just like to ask you whether this is wrong, whether this represents your thoughts or not: "The only thing that is going to move college administrators"—you didn't use the words "college administrators"—"is blow up a building; either you blow it up, or you say you don't want to change that much anyway."

Miss JEFFERSON. Sir, the disservice you do me is that you leave out the entire context in which that was placed.

Mr. AGNEW. I would like to hear how—

Mr. CRAIG. She has said that she is not in favor of violence as a tactic. She is opposed to it, and publicly denies it.

Mr. FROST. This quote—I think you were saying—is that where you were quoting a minority point of view with which you did not agree, and you were paraphrasing what they thought. Is that what you are saying?

Miss JEFFERSON. This is probably the last time I will say this. I don't want to get into an argument because there are much greater issues. But I was trying to explain the rationale behind a minority—but an active minority—of college students. I can't prove to you that I am not for violence. I can just say it. And I guess we should move on to something else.

Mr. SILVERMAN. I am not sure why it should be necessary—

Mr. FROST. Steve, let's turn to you. You haven't had a chance to speak.

Mr. BRIGHT. O.K. Thank you. I notice among the things you talk about a great deal are violence and crime. And I think probably most people would agree that they are opposed to violence and opposed to crime. I think most college students would be. But one thing I am interested in is: Don't you see that if the political system is not responsive enough, and if people with whom you disagree—especially if you use the power and prestige of your office to intimidate them or to call them "effete snobs," rather than to deal with the ideas which they are advancing—that we could someday in the future reach a stage where violence, as you talked about it a moment ago, might be the only solution or might be the only alternative for some people who are up against the wall?

Mr. FROST. What do you mean, if the system is unresponsive? You're saying—

Mr. BRIGHT. I mean, can you foresee that happening, eventually?

Mr. AGNEW. Well, Steve, I've got to say this much: First of all, I'm disturbed with the way people jump from a very carefully limited expression I might use to include a lot of people that aren't intended to be included. And I noticed when Miss Jefferson was talking she assumed that I was hostile to all students. That's not true. I have never criticized all students. I think that the hope of the country lies with the students.

But as far as crime and repression, those things, are concerned, we've got to understand that we do have a responsive system of Government. We do have a Government where the people elect their representatives every two years, every four years or every six years, depending on the level of Government. And if a President is elected, after a hard, adversary, issue-oriented campaign, such as we had in 1968, and he is given a mandate of the people—a majority of the people or even a plurality of the people—to lead the country for four years, he has a right to do that without having people calling for a referendum in the streets.

Now, you may disagree with what he's doing and, if you do, you have a right to work within the system to have him turned out of office when his term is over.

But what is it that gives certain students the feeling that they are able to exhibit or reveal truth of which direction this Government ought to go. After all, students in this country are only about 4 per cent of the population. People between the ages of 16 and 24 are only about 10 per cent of the population. Do you think students should have some special privilege to be heard and heeded?

Mr. BRIGHT. No, but by what you have just said, haven't you pointed out that the only time we have really any fear of violence or any fear of a revolution in this country is when enough people—is when the Government has failed to respond to so many people that there is tremendous support from it—certainly not the support of only a very teeny minority?

"I HAVE NO FEAR OF REVOLUTION"

Mr. AGNEW. I don't see the tremendous support, and I have no fear of revolution in this country whatsoever. I think that there is a great drama attached to it. The rapidity of communications makes it possible to show numbers of people in disagreement with the Government but, as far as the violence is concerned, you and I know there are very few people involved in violence at the present time.

Mr. BRIGHT. One thing: Many students who are on a part of the spectrum where their means of behavior is often very unpopular—and certainly most unpopular to you, a dissenting point of view—but nevertheless is very legal. Haven't you often put the students in two camps—the students who are there to, quote, "get an education," and the students who are the militants and who are bent on destruction and violence?

Mr. AGNEW. I have indicated in an in-depth article that was written in "Life" magazine not too long ago how I feel about dissent and what kinds of dissent I think are proper.

Lawful dissent is proper. I have no quarrel with certain types of civil disobedience where the law being violated is directly related to the grievance. But I think when a person lies down in the streets of the city of Washington and disrupts traffic because he doesn't like something the Department of Agriculture is doing—that's a little bit much.

Miss JEFFERSON. Sir, could I backtrack to one of your comments, and that was: What right do a small percentage of people have to—and I think this is quoting from one of your speeches—harass the President. If I could be historical for a moment, using my student perspective: Slavery in this country went on for a number of years, supported by the majority of the people. It was a small minority of people who were termed radical, maybe radical-liberals in their times, who kept agitating—who kept agitating continually. And they were looked down on. You know, the Abolitionists were looked on as the crazies of their day. Yet, looking back in perspective on that, we see that they were right.

And I think that the college students—and it's not just college students, it's people whom you might term the radical-liberals, and I think I'd like to deal with that later, too, but will wait. It's people, you know—adults, Democrats, independents, old people, people who aren't students—a lot of people are protesting the policies of your particular Administration. I think it is our moral obligation to protest those things lest we be caught in the same bag that Germany was under Hitler, where too many people sat back and kind of let things happen. I'm not saying that the country is in that shape right now. I really don't think that that's true. As I said, there are a lot of things right with America. It's just that I think it's our moral obligation to "harass" the President. It is not harassing; it is our constitutional right.

Mr. AGNEW. I agree with you 100 per cent. It is a moral obligation, not to harass the President but certainly to take him on where you think he's wrong. But I fail to see where the tactics that have been employed so extensively by not all students—again I hate to be characterized as criticizing all students, because I know there are a large number of students who want to involve themselves in a productive dialogue rather than the screaming of obscenities in the streets. But, unfortunately, the students who do chant and scream the obscenities, who substitute cadence count of four-letter words for rational dialogue are the ones that are getting the attention.

Now, of course, I agree with you that there are people in the forefront of every social change, but I don't think that violence or dropping out of society is the way to dramatize the propriety of your position. I think you should participate within the system as you are doing, as you say you're doing, and I respect you for it. And Heaven knows, I don't quarrel with your right to have an opinion different than mine or to articulate it, but I don't see why taking some violent stance, disrupting the rights of other people to move freely and to assemble freely—as happened to me in Saginaw, Mich., when I tried to make a speech and was shouted down by a bunch of people who had no idea of what they wanted to say to me, except they didn't want me to be heard. Now, that's repression of my right to express myself.

Mr. FROST. Mr. Vice President, I guess, first of all, the violence that you would feel is out of order is something that I am sure—or I assume—all of our panel would agree is going too far, namely bombings and burnings and killing, and so on, and that form of violence. I'm assuming probably that we would all rule that out. When we have ruled all that out, and that obviously is the work, as you say, of a tiny, tiny minority, what other forms of conduct or agitation—you mentioned lying down in front of traffic for an issue not connected with traffic—what else would you rule out of court?

Mr. AGNEW. Sure. One of the things I'd rule out in the way of nonviolent conduct is that kind of conduct that deprives other people of their rights.

Now, let me give you a perfect example: We are having what we hope will be an interesting television program for the people in the country. It's being put on at considerable expense to your sponsors. Suppose a group of people marched into this room and suddenly stationed themselves in front of each of those cameras, nonviolently, and said: "Because we don't think this format is proper, you're not going to be able to show this program." That's the kind of nonviolent conduct that imposes on the rights of oth-

ers—the same kind of demonstration that is totally unrelated to the people who are inconvenienced. Tying up traffic, the types of disruption that are involved in activities that affect people who are not the object of the protest, even though they are nonviolent, are not permissible.

We live in a lawful society and I think these young people would agree that, for example, the students who are not interested in the protest of the moment that is going on in the campus and want to use the library wouldn't like to be turned away from the library because that's been set up as guerrilla headquarters for the protesters.

Mr. FROST. What forms of civil disobedience—you mentioned that some are perfectly permissible or have been—what forms of civil disobedience do you regard as O.K.?

Mr. AGNEW. I'll give you an example of that: Now, when the bus boycotts took place in Alabama, here was a direct action that was related to what was claimed to be an unjust law. In other words, the people refused to use the bus because it was the discrimination on the bus that they were protesting about. If the protest is directly related to—the action is directly related to—the subject of the protest and later this is found to be an unconstitutional law, there is some reason to say, "Well, this is certainly understandable; this is an understandable dissent." But a dissent that is unrelated to the subject matter is not understandable.

FOUR-LETTER ARGUMENTS DON'T IMPRESS

Mr. CRAIG. Sir, could I ask a question about responsible and irresponsible rhetoric? We have been talking to a certain extent about political inactions. I think it is fair to say that there are responsible things that people can say and irresponsible things that people can say. As you pointed out, the four-letter arguments don't impress you. But the content of rhetoric strikes me as being very important because it provides an atmosphere and a milieu for the way people think politically.

In the last week you attacked the United States Senate in an unprecedented way. You preside over the United States Senate. I don't think in the history of the United States has any Vice President ever attacked members of his own body to the extent that you have. Let me quote one of these things:

You said "a little band of men" you defined as radical-liberals—a group of Senators who are "a little band of men" guided by a policy of calculated weakness—who vote to weaken our defenses; they vote to weaken our moral fiber; they vote to weaken the forces of law. Now, sir, that is quite a serious charge to be making against a popularly elected official of the United States who simply disagrees with you on certain issues. They may think that what is strong for the United States is different from what you think is strong. Do you call their patriotism into question? Do you impugn their loyalty to the United States? I think this is the kind of thing that undermines authority, undermines the institutions that we really believe in.

The way in which the Attorney General attacked educational administrators—does that improve the credibility of the educational institutions in this country? I don't think so. I think, in fact, there may be some kind of unconscious but mysterious and rather dark conspiracy between the members of the Administration and the "far left" who undermine our institutions and take them away from the people.

Mr. AGNEW. First of all, it is not unprecedented for a member of the Senate or a Vice President to attack his political adversaries, and sometimes in the past it's been done a lot more violently. Actually, there have been occasions of physical violence in the Senate of the United States where one Senator beat another one with his cane. I would remind you of that. I haven't done that and have no intention of doing it, and I certainly hope that one of these large Senators take after me, but this is an adversary climate.

My rhetoric is no different than the rhetoric that has been turned upon me—sometimes a lot less inflammatory. And there is no way to say that this kind of hard, political—adversary language hasn't been used, Greg.

I remind you President Franklin Roosevelt, with his ridicule of Martin, Barton and Fish over and over again, and some of the things he said about them. Harry Truman called his opponents "snollygosters," whatever that was; Teddy Roosevelt called them "pusillanimous pussyfooters." The rhetoric hasn't changed. I stole it from Teddy Roosevelt.

Mr. CRAIG. Mr. Vice President, I wonder, sir, if it is appropriate to challenge their patriotism.

Mr. AGNEW. Let me just answer that, because I want to get to that part. In the same speeches that you quote, there are passages that very carefully say that I do not impugn or question their patriotism. I do not question their motives. This is part of the speech.

I have always qualified my criticisms of these people. I think they are terribly wrong. I think the radical-liberals, as I characterize them, are wrong because their policy amounts to an isolationist posture internationally, a permissiveness socially, and a big-spenders program in the domestic sense—a big-spenders program without looking to see where the money went or whether it's doing the good. And I reserve the right to take them on, and let me tell you one thing: I am not going to stop saying what I have to say about them in a way that I want to say it, because this is my right of free speech. I don't have any idea of allowing anybody to repress me, any more than you do.

Mr. SILVERMAN. I'm very much disturbed by the tenor which the conversation has now taken. It strikes me as macabre that we are sitting here pondering the wisdom of one's rhetoric or the nature of the alliteration that has been adopted by the Vice President, when we really have some very real questions before us. He spoke before of obscenity ,and I would like to pursue that—put that in terms of a speech that the President recently made about violence—because we are talking about some fairly obscene situations in which the United States is involved, which goes well beyond the nature of intellectual discourse.

What is happening in Vietnam right now is an obscenity. Further killings—the thousands and millions—hundreds of thousands of mutilated bodies in Vietnam is simply not something we can dismiss as passé, that we've gone beyond, that we are now concerned with more sophisticated subjects.

I wonder how the President or the Vice President can reconcile this strangely self-righteous position that they take on violence while the United States is at this time the most singularly violent country in the world. I would like to put that in the domestic frame of reference, too, if I may.

Mr. FROST. That's a perfectly coherent question, and let's have an answer.

Mr. AGNEW. Do you want me to go ahead with what you have said so far?

Mr. SILVERMAN. Well, I would like to make an addition, if I may. I think it is also very dangerous for Americans to delude themselves that our hands are being dirtied only across the waters. What's going on in the United States right now is not merely the sloganism or the rhetoric of the left when they talk about violence and repression. We have real examples with us all the time. Kent State is not just a dirty chapter in the past, the killings at Jackson State [in Mississippi], the shootings at Orangeburg [South Carolina State College], the murder of [Black Panther] Fred Hampton in his bed. These are real; these are going on. And I've yet to hear the Vice President or the President speak in the same harsh terms to these kinds of acts of violence. I'd be eager to hear that today.

Mr. AGNEW. All right. Let's go back to the first part. I assume what you are really saying to me is that Vietnam is an immoral war? Is that succinctly put—what your thought about it is?

Mr. SILVERMAN. I will accept that for the moment.

Mr. AGNEW. Do you think any war is moral?

Mr. SILVERMAN. I think there are degrees of morality. And I am willing to play that philosophical game with you.

Mr. AGNEW. Explain what you mean by "degrees of morality."

Mr. SILVERMAN. Well, much as one negotiates any kind of philosophical discussion.

Mr. AGNEW. Let me ask, for example, if tiny Israel were overrun today, would it be moral for the United States to engage in a war in the Middle East?

Mr. SILVERMAN. Well, Mr. Vice President, I just rejected your contention that there are no moral wars. What I am concerned with at the moment is how the United States can sanctimoniously abhor what is going on in Vietnam, suggest that it's winding down, whereas in today's newspaper we read that Vice President Ky, your counterpart in South Vietnam, is about to visit us and to march in a "victory now" parade that is sponsored by the Rev. Carl McIntire. The American people are led to believe—and I, too, would like to share this fond hope—that the war in Vietnam is indeed winding down. But I am very fearful that what we have in its place is a war in Cambodia, a war in Thailand, as well as a war in South Vietnam. And we are supporting a regime in Saigon that is being all too clear, all too succinct about what their ambitions are. Vice President Ky is not at all inclined to negotiate. Why are we supporting him?

AMERICA'S "FINEST HOURS"

Mr. AGNEW. Let me go back to the first question about Vietnam. Now, we got involved in Vietnam not out of any sense of expanding a colonial empire or imperialistic aggression. We got involved in Vietnam because the Communist Party of North Vietnam violated the 1954 Geneva Accords—documented violations—massacred some 50,000 South Vietnamese of professional and impeccable credentials, [able] to assist society in a social sense, and imposed, through one one of the most brutal agrarian reforms ever characterized as such in the history of man, its will upon the people of South Vietnam.

Now, the Viet Cong, the so-called indigenous South Vietnamese, have never been able to muster the kind of support in South Vietnam to oppose the Government. Seventy per cent of the people fighting in South Vietnam are North Vietnamese regulars. The North Vietnamese have violated the Accords of 1954. The International Control conference that met in 1962 castigated and criticized them for violations that took place in South Vietnam.

Yes, there have been brutal massacres, and the people of South Vietnam at that time turned for assistance to the free world, and the United States in what I consider to be one of its finest hours under one President, followed by another President, followed by another President irrespective of political party, saw fit to engage in what I consider highly moral conduct in assisting those people who were the subject of Communist aggression.

Now let me say this about war: Nobody wants war, but the thought that war is a unilateral exercise that the party waging it can call off immediately without involving the other party is fictitious. The North Vietnamese want us to simply give up and allow them to have their will on the South Vietnamese.

We feel that the "domino theory" is totally valid. I have been to Asia twice in the

past eight months, and I know the "dominoes" think it's valid. Now, we cannot stop war simply by proclaiming that we won't pay any attention to it. And war is the last resort that we must resort to when our freedoms are attemped to be overridden by people who are assailing us.

Mr. SILVERMAN. Your logic does not convince me anymore than it convinces your daughter.

Mr. AGNEW. It convinces her a lot better than it used to.

Mr. FROST. It does, does it? Because you talked about that last time we were talking—is she more convinced of your point of view?

Mr. AGNEW. Yes, and I haven't had to be aggressive or violent in any way to get her to think that way.

Mr. CRAIG. Am I wrong in interpreting your comments to be that we are, in fact, seeking a military victory in South Vietnam still?

Mr. AGNEW: You are quite wrong, quite wrong.

Mr. CRAIG. Then, why, sir, have we completely disregarded the new negotiation proposals that have been suggested at Paris?

Mr. AGNEW. We haven't disregarded them, Greg. We are looking at them. But you can't say disregard. We've only had them a few days.

Mr. CRAIG. Ambassador Bruce said it was old wine in new bottles. There was one provision there that had never appeared from the North Vietnamese or the Viet Cong before about negotiating for prisoners of war. Now that kind of posturing by our Ambassador endangers the lives of our prisoners of war in North Vietnam and South Vietnam.

Mr. AGNEW. What is it that makes you extrapolate, lift out of context, that one sop to the antiwar movement and fail to see that the conditions that they are asking are simply that we get out—unilaterally withdraw—without their having to take any other action.

Mr. CRAIG. So you are saying it is not a serious negotiating proposal—

Mr. AGNEW. I say that, superficially, it looks like it ought to be regarded very suspiciously. I'm not saying that we shouldn't look at it.

Mr. CRAIG. It is my understanding that there is not anything we can negotiate, then, in Paris.

"POINTS ON THE TABLE" AT PEACE TALKS

Mr. AGNEW. We have got a lot of points on the table.

Mr. CRAIG. The progress of the war in Vietnam depends on the negotiating situation in Paris, and with that attitude we will never get anything accomplished.

Mr. AGNEW. May I ask a question? Suppose we would make some offers of this type? Suppose we would say that we are willing to withdraw if they would withdraw, that we are willing, for example, to have the world at large, an international body, come in and supervise elections that would be overseen not just by countries friendly to us but by Communist countries, too, that we would allow the South Vietnamese the right of self-determination, that we would seek no bases or any other permanent installations there. Isn't this a basis of a settlement if we'd make these suggestions to them?

Mr. CRAIG. Why don't we respond to their suggestions?

Mr. AGNEW. Let me ask you, how about those suggestions?

Mr. SILVERMAN. I'd like to respond to that, because it occurs to me that what you have outlined there is essentially the Geneva Accords of 1954. And at that time the United States blatantly and flagrantly disregarded those very precepts. And now you would have the North Vietnamese believe that we are about to abide by them because we no longer find it advantageous to pursue another policy. At the same time you are suggesting, with the incredible amount of gall that Americans have used in this issue, that Vietnamese ought to, in effect, leave Vietnam—or South Vietnam, as we make the artificial distinction—for the settlement of their own problems.

Mr. AGNEW. Could I come back and ask the question: If we offered those things, would that be a basis of a negotiation?

Mr. CRAIG. The three things are the withdrawal—

Mr. AGNEW. Three or four things: Withdrawal—we'll withdraw when they do. We will agree to supervision of the withdrawals. We will agree to internationally supervised free elections, with Communist countries in the supervisory bodies, and we will abide by whatever the people of South Vietnam decide they want in the way of a Government.

Miss JEFFERSON. Sir, could I answer that?

Mr. AGNEW. Let's just finish this, if we may.

Mr. CRAIG. Would the South Vietnam Government accept those?

Mr. AGNEW. Yes, and assuming the South Vietnamese Government would accept those conditions—

Mr. CRAIG. Have they stated that they will accept those positions? I think Vice President Ky has said that they will not accept Communists in a Government.

Mr. AGNEW. Let me ask you—I am asking you a hypothetical question now.

Mr. CRAIG. We cannot negotiate unless we have the cooperation of the South Vietnamese.

"A REASONABLE BASIS FOR A SETTLEMENT"

Mr. AGNEW. Let me say then: Suppose I would put in my hypothetical question that the South Vietnamese said yes, they would accept them. Is that a reasonable basis for a settlement?

Mr. CRAIG. That sounds like a reasonable——

Mr. AGNEW. All right, just let me make this one point: Everything that I have just said to you is lying on the table in Paris today, including the South Vietnamese acceptance of those conditions. And every one of those points has been rejected by the North Vietnamese and the Viet Cong.

Mr. SILVERMAN. You have done an incredible job of simplifying what is going on.

Miss JEFFERSON. If I could go back into history again. I'm sorry to keep doing this, but I find it necessary. In 1954—you gave a correct analysis of what happened. However, you left out some important facts, and those facts were the conditions under which the Communists laid down their arms. They said they would agree to freely held elections in all of Vietnam at the time—and this is documented in the Geneva Accord. It was not separated into two countries—it was two zones. I am sure you know this.

Now, at this time President Eisenhower when he was still alive said that if elections had been held he felt Ho Chi Minh would have won by 80 per cent of the votes. At the same time Mr. Diem [former President of South Vietnam] came in, and I believe what he said when he came in was that he would not be a part of a Government that had Communists involved in it. At this point the Communists picked up their arms and started fighting again because they say that the leaders of the Southern part of Vietnam were not going to live up to the Geneva Accord. I guess they are just looking back at history, too, and wondering if we are going to keep our word.

But the question I would have with you is one that Greg pointed out: Are you saying that we want to withdraw from Vietnam and let the Vietnamese fight their own war, or are you saying that we are going to help them fight their own war? See, I think a lot of people whom I talk to say we support Nixon because he is trying to get us out of Vietnam, but it seems to me what I just heard you say is that you are not, and that you're still for Americans fighting that war.

Mr. AGNEW. Let me clarify the Eisenhower quotation. When Eisenhower said that Ho Chi Minh would without any question win that election, it would be Ho Chi Minh running against Bao Dai, who was the then leader, who was the next year defeated by Diem by an 80 per cent margin. So everyone knows that, yes, Ho Chi Minh would have won against that particular person, but not against Diem.

Now, as far as the situation goes about the election that was offered, the Communists refused international supervision of that election, and it was impossible to have a free election leaving it to the countryside, which was completely terrorized by the Communists at that time. There was no way to have an election that would have been at all free without some international supervision of the quality and magnitude that would have protected the South Vietnamese.

Point No. 3, and the last point: There isn't just one Vietnam—there are two Vietnams at the present time by wish of the people. Thirty-some nations have recognized the sovereignty of South Vietnam. Some 19 nations have recognized North Vietnam. The people in Vietnam have been having free elections. They just had an election of province and district leaders this year. This was a free election with a 65 per cent turnout of the electorate. It's a fiction to say that the Vietnamese people at the present time—who are under the domination of the Communists have ruthlessly and brutally repressed freedoms—

You don't see any dissent over in Hanoi at the present time, principally because people would be executed if they dissented.

Miss JEFFERSON. In Saigon—

Mr. AGNEW. Yes, you do see dissent in Saigon.

Mr. SILVERMAN. As opposed to being held in "tiger cages" off an island—

Mr. AGNEW. Let me say about the tiger cages that they are maximum-security cages—not the best, certainly. You could go into some States of this country and find conditions in the prisons that are pretty bad, too—

Mr. SILVERMAN: I quite agree, and I would like to see the Administration move on prison reform as well. But let's talk about the kind of cages that we have now at My Lai—the 500 cages there. And let's talk about the 40,000 cages for Americans. It seems incredible to me—and I realize that you're a man who has a great ability to throw these things out and I shouldn't be surprised any longer that you can still represent to the American people, and particularly to what you know to be the critical student left—that Diem was the folk hero of South Vietnam. If that's the case why are the United States' hands so damned bloodied at his execution?

Mr. AGNEW: I don't think the United States' hands are bloodied at anybody's execution in Vietnam.

Mr. SILVERMAN: Are you saying there was no CIA involvement in the toppling of the Diem regime?

Mr. AGNEW: Exactly! Exactly! What gives you the thought that there was?

Mr. SILVERMAN: Would you admit, just to set some perspective here, that there has been CIA involvement in other regimes—for example with our hands in Guatemala?

Mr. AGNEW: Well, let me just respond by asking you one question.

Mr. SILVERMAN: I would appreciate a response to this question, Mr. Vice President. It has tormented me for some time.

Mr. AGNEW: Give me the question again.

Mr. SILVERMAN: The question is: Would you concede that the CIA has toppled other sovereign governments?

"SOVIETS ARE ENCOURAGING ANTIWAR MOVEMENTS"

Mr. AGNEW: No, but I think they have tried to persuade people in another country, where they feel that the administration

is terribly unfair and hostile, to certain courses of action, just as other nations. I'm being completely frank now. The Soviets are encouraging a lot of people that are involved in antiwar movements here at the present time, as are the Communist Chinese, as are the North Vietnamese.

Mr. SILVERMAN: But you decry that—you protested, and legitimately so, I suppose, from your point of view. Why then do you not raise the same grievances about the CIA involvement?

Mr. AGNEW: All I can say is that the United States is lily-white compared to most countries in this respect.

Mr. FROST: We had a lengthy discussion there on Vietnam, and there was part two of your question, Rick, which was about violence at home, where you said—and you cited three things. Have they been condemned as roundly? Now what were the three things you questioned?

Mr. SILVERMAN: I think I cited more than three, and you could probably choose almost any three at hand.

I talked about the Fred Hampton murder in Chicago. Let's explore that, if we can.

Mr. FROST: You also quoted the "hard hats" and you quoted something else.

Mr. SILVERMAN: I didn't quote the hard hats, but I would certainly like to.

And I am curious as to why the President—

Mr. FROST: Well, look, don't launch into a whole lengthy question. I just asked you the list. We will never get to the answers of anything.

Mr. SILVERMAN: I talked about Kent State and I talked about Jackson State. I talked about Orangeburg—

Mr. FROST: You also mentioned hard hats at some point. And your question at the end there was: Has that sort of violence been equally, roundly condemned? Wasn't that basically your question?

Mr. SILVERMAN: Yes, essentially.

"PRECURSORS OF VIOLENCE" AT KENT STATE

Mr. AGNEW: I get the question. I will respond to it in segments. First of all, I have no personal expertise in the matter you mentioned involving Hampton. Is that still in the courts? I can't speak to that because I don't know enough about it. I just don't know the circumstances surrounding it.

With regard to Kent State, I think it is amazing how obliterated from the public memory is the fact that the night before the Kent State incident, which I deplore and which I think was a most unfortunate reaction on the part of other young people—people in National Guard uniforms—who made a terrible error of judgment at that time, feeling that their lives were threatened. Now the evidence seems to indicate that they overreacted.

But looking at the Kent State thing, the night before—two nights before—when the students went through the streets of the city, destroying property, breaking windows, doing what they call "thrashing" the Establishment, and the night after that when they burned the ROTC building to the ground, and at that time, when the firemen came to put out the blaze, those same students of Kent State cut the fire hoses.

People have forgotten the precursors of this climate of violence that existed. People have forgotten the precursors that created this inflammatory atmosphere that took place. Then came the Guard—came the Guard—into a situation where the president of Kent State himself has said he has never seen people quite so disturbed and so ugly as were segments of his college community, whom he describes as being human debris dumped on his campus by the Ohio open-admissions system.

Here comes into that climate the National Guard, young people just like yourselves, not professional soldiers, and they were afraid because, as the situation developed, there were rocks and confrontations happening around them.

Now I don't excuse what they did. But are you willing to say that placed in that same situation, being part of that group of people, if someone lost his cool and fired, that you as a member of that group would not have fired with him?

Mr. SILVERMAN: Yes, I am absolutely willing to say that, and I am willing to pursue it a step further. I want to ask you—speaking of precursors—which one of those was justification for murder? Was it the burning of the building? Was it the marching? Was it the shouting of obscenities?

Mr. AGNEW. I don't say that any of those things were justified.

Mr. SILVERMAN: Or was there another precursor that ought to be considered? And I would like to make this point, which is perhaps my last one—

Mr. FROST: Your last point—

"THIS INCENDIARY SURROUNDING"

Mr. AGNEW: Can I answer the questions as they come? You are answering your own questions.

Which one justifies murder? I never suggested that any of them did. I merely have used these incidents to show that the inflammatory climate that developed there didn't come about because of the National Guard, which would not have been on the campus had not these things happened. So I'm saying that part of the blame rests with the people who created this incendiary surrounding that caused the explosion. I don't excuse what happened on the campus.

Mr. FROST: Rick, rather than letting you ask the next question, as you know, among our student presidents in the front row is Craig Morgan of Kent State. I think you should make a comment.

Mr. MORGAN: I have a number of questions I would like to direct to Mr. Agnew. I would like to preface them by stating the fact that I was there in all the disturbances all week long, and I hope it doesn't incriminate me in Portage County [where Kent State is located].

But first of all, I recall that on one occasion—I believe it was on this show, as a matter of fact—you stated that, if there were no sniper fire, then that would have been murder on behalf of the National Guard. It is an inadequate statement.

Mr. AGNEW: Mr. Frost and I were talking legalistically, I think he will agree, and he said, if there were no sniper fire and the Guards simply opened fire without any explanatory reason, would that legally be murder, and I said yes, as a lawyer, I'd have to say it would have been second-degree murder.

Mr. FROST: But not in the first degree, you said.

Mr. AGNEW: It would have been certainly a crime to do that, yes. I'd say that is true.

Mr. MORGAN: I would like to elaborate on that a little later. But, first of all, I would like to speak against the philosophy which seems to be predominant in this country. I have heard that same position cited by Mr. Nixon a few days after the Kent State shooting. I've heard it cited by Portage County officials, by Governor Rhodes [of Ohio], by the Portage County prosecutor.

Mr. AGNEW: Could I interrupt to ask what philosophy are you referring to?

"COUNTERING THE ALLEGATION"

Mr. MORGAN: Yes, the philosophy of immediately countering the allegation that four Kent State students were murdered—immediately countering that by saying, "Well, it was an aura of violence, and three nights previously windows had been broken in downtown Kent, and our ROTC building had been destroyed, and there were rocks being thrown." There was never any elaboration upon that.

Mr. AGNEW: I'm not trying to counter it, honestly. I'm not trying to excuse it. I said I found it deplorable. But I'm also saying—

Mr. MOGRAN: I don't wish to play with semantics. You may not be excusing it. You may not be counting it. But nonetheless you're trying to reduce the severity of the sanction I'm trying to put on the National Guard. The point is that since when in this nation is throwing rocks, is breaking windows or is burning an ROTC building a capital offense? And more so than that, I'd like you to answer me: Why is it that, if one of those is a capital offense, that one of the people who was shot was just walking to class?

"AN EXTRA MEASURE OF RESPONSIBILITY"

Mr. AGNEW: Let me put it this way: Under the law a person who breaks into a building, a burglar who commits even a second-degree murder in the course of that other felony is guilty of first-degree murder. So when you create these volatile and inflammatory circumstances you have to take an extra measure of responsibility. Now, all I'm saying is this: Without the conduct, whether it is capital or not doesn't make any difference—you admit it is unlawful. I hope you admit it is unlawful. Do you?

Mr. MORGAN: Yes.

Mr. AGNEW: It is unlawful. There had to be some response to the burning of the ROTC building. The Governor of the State had to take what steps he considered necessary to protect the property of the taxpayers. That's what was on that campus. And protect the rights of those other students. So he sent the Guard in there. The Guard were there.

The Guard are young people like yourselves. They are not people that represent Mr. Nixon or represent me; they are there to do a job of preserving peace and order. And as a result of the conditions that came about because of the violence that began with the actions of some of the students on the Kent State campus—and certainly not all; I don't mean to suppose that they were all involved—this is the result, the deplorable result. I don't excuse what happened, what the Guard did, but I say it wouldn't have happened at all.

Mr. MORGAN: If it is murder, sir, isn't it indictable?

Mr. FROST: Mr. Vice President, you have obviously thought through this whole question of violence at home a great deal.

Do you think there is any justification to the suggestion that a number of people have made in the last week that the hard hats, who, for instance, beat up students here in New York a bit, and so on—that they have received, in any sense, more lenient treatment from speakers like yourself than the student protestors?

Mr. AGNEW. I think there is a fundamental difference in what happened with the hard hats and what happened with the disruptions on the campus. Let me explain what I mean by that.

First, I think that the campus disruptions were not spontaneous, they were not the result of a rage that swept a person who worked with his hands to build America, to see people advocating that it be torn down. This was a wave in defense of a country, not a wave to destroy a country. It was not a premeditated attack on the institutions of the country.

Now, I don't condone the violence when the certain members of the hard hats lost their temper and resorted to fisticuffs. I don't condone that at all. I think it was wrong. I deplore violence in any form. But it was understandable. Here you have a group of people who have worked with their hands and worked hard to get where they are in this country.

And I hope I get some questions before we quit about the so-called materialistic society, because one thing I want to point out is that there can be no improvement in the quality of life unless we have certain material comforts—the right to be secure, the right to be warm, the right to be fed, the right to have the time to engage in these social expressions.

But I can't equate that wave of revulsion that shook these construction workers when they saw the flag of the United States defiled, when they saw people ridiculing the institutions of the country that had given them a chance. That's a different perspective. It's not in equal balance.

Mr. SILVERMAN. Mr. Agnew, you say that you are troubled by that as well and that you do not accept it, and yet there is a quite remarkable picture in a short article in a recent "Scanlan's magazine which shows the President of the United States having lunch with Mr. Brennan [president of the New York Building and Trades Council] and his coterie of hard hats shortly after that demonstration. Now part of the difference involved here is, one deserves legitimate chastisement and the other gets a lunch as opposed to a state dinner.

And I also want to say something else, as a parting comment—I guess I've been rather obstreperous through all of this.

You have a very strange sense of history, sir. You have a great facility for recalling what's happened in 1954 when it's to your convenience and not recalling what happened in Guatemala when it's inconvenient for you. You have a strange sense about what happened at Cambodia and Kent State as well. You suggest that the causative factors there were student protests, students' throwing of rocks.

You don't suggest, sir, what happened the day before that. You don't suggest how disgusting, how abhorrent it is for those of us who feel this way to watch the United States invade Cambodia. You don't seem to think that that's a causative linkup. And you talk about an aura of violence. You talk about precursors of violence.

And there's one small failing left out here, and this is the disti ction between your being a political joke and your being a very serious man. And that is that you yourself, singularly, are perhaps the greatest percursor of violence in this country. You have done more to build an aura of violence, to build a milieu in which violence is accepted than anyone else I know.

Mr. FROST. Can you give an example of that? That's a very big charge.

Mr. SILVERMAN. I think the Vice President gives examples of it in virtually all the speeches he gives.

"ONE OF THE MOST RIDICULOUS CHARGES"

Mr. AGNEW. May I answer that?

Let me just point out one thing: Long before I became a household word, violence was rampant in this country. The Berkeley campuses exploded when I was still back in county government. Columbia University was turned topsy-turvy long before President Nixon was even inaugurated. And yet you say my rhetoric has caused the violence.

Let me point out something else: Student violence is a way of life in Germany, in Japan, in England, in many other countries where the effect of my rhetoric is virtually nonexistent. Now, to use me as some convenient bête noire for the violence that's existed in this country because of the disgusting permissive attitudes of the people in command of the college campuses is one of the most ridiculous charges I've ever heard.

SENATOR CHURCH INTERVIEWED ON NBC'S "TODAY SHOW"

Mr. CHURCH. Mr. President, on the morning of October 8, I was interviewed on NBC television's "Today Show," along with the Senator from Michigan (Mr. GRIFFIN), in regard to the President's peace proposals.

I ask unanimous consent that the transcript of that interview be printed in the RECORD.

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

AN INTERVIEW WITH SENATORS FRANK CHURCH AND ROBERT GRIFFIN

EDWIN NEWMAN. In our Washington studios to talk about President Nixon's proposals for peace in Vietnam are two United States senators, Robert Griffin, Republican of Michigan, the Minority Whip; and Frank Church of Idaho, who's a member of the Senate Foreign Relations Committee. They're with Bill Monroe.

Bill.

BILL MONROE. Thank you, Ed.

Senator Griffin, what is your general reaction to what the President had to say?

Senator ROBERT GRIFFIN. Well, I think it's a very encouraging, bold, realistic step. It may very well put us on the threshhold of peace. And, frankly, I believe the most encouraging thing has been the response that has come from Senator Church and Senator Mansfield, and others here at home indicating that there's widespread approval and that we may have a solid front to present at the Paris talks.

MONROE. Senator Church.

Senator FRANK CHURCH. I warmly applaud the message, Bill. I think it constitutes the most promising formula yet advanced for a negotiated settlement of the war. And, of course, I strongly favor the President's plea for the immediate release of all prisoners of war.

MONROE. Is there anything you would have liked to have seen the President include in his proposal that perhaps he left out?

Senator CHURCH. I don't want to be critical of what he did. There are ambiguous parts, but necessarily so. The first reaction one might expect from Hanoi is one of rejection and one of ridicule, but this doesn't mean that these proposals will not yet become the meat for serious discussions in Paris. The signal when serious discussions begin will be when the propaganda exchanges meant for world opinion end and the talks start in earnest behind closed doors.

I hope that the President's message helps to move the discussion forward in Paris.

MONROE. Senator Griffin, what is the reason for believing as you do, that we might be on "the threshhold of peace" here. For instance, if Hanoi and the Viet Cong have been fighting for many years for a share of political power in Saigon, is there something in this proposal that might offer something to them? Is there some new possibility for them?

Senator GRIFFIN. Well, it certainly opens the doors wide to any serious negotiations that the communists are willing to engage in. And as Senator Church has said, there's some ambiguity, and this is good. This indicates that we're not frozen in fixed positions and can't move.

Certainly the fact that we're willing to negotiate the withdrawal of all American troops and on a timetable to be negotiated is a move in the direction that the communists should welcome. Now they've talked about a cease-fire. They put conditions on their cease-fire. We've proposed a cease-fire without conditions.

Surely we're moving closer together, even though both sides perhaps have rejected the other's offers. I think, as Senator Church has said, it's perhaps not so important what is said in public by the other side. I think now it's what is said in private and whether or not there's any movement, perhaps behind the scenes, toward a real settlement of this terrible war.

MONROE. We seem to be particularly strong in Vietnam now and in Paris compared with our position two or three years ago. Now, the communists would seem to have only the fact that they're still fighting, still shooting, as a bargaining lever. Wouldn't they give that up if they agreed to a cease-fire?

Senator GRIFFIN. Bill, we're strong because the Vietnamization program, which has been criticized in the past as an effort to prolong the war, has been very successful. And we're stronger because the Cambodian operation, which was severely criticized, was successful.

I think that the communists are in a position now where it's in their interest to arrive at some political settlement if possible. Because we are withdrawing; the South Vietnamese are becoming stronger, and they're going to be able to handle the situation on their own.

MONROE. Have the Cambodian operation and the Vietnamization operation been successful so far, Senator Church?

Senator CHURCH. This depends a great deal upon how you measure it. In Cambodia before we entered that country, the communists had about ten percent of the country in their control. Today they have between one-half to two-thirds of the country in their control.

It depends, therefore, on how you measure it.

As far as Vietnamization is concerned, that has always been just another word for withdrawal. And I have favored American withdrawal from Vietnam for a long, long time. You can argue about the timetable, but as the President pointed out last night, he will have withdrawn about half of our forces by the end of a two year period.

Basically, Vietnamization is withdrawal, and that's something that I have advocated since 1964. I think it's wise; I hope the President continues with it in the future.

Senator GRIFFIN. If I could just inject a discordant note. I don't think Vietnamization can be equated with withdrawal, period. This is one of the things we've been arguing about in Congress. It's withdrawal in concert with the strengthening of the South Vietnamese forces. As they become stronger and able to handle their own situation, we are gradually withdrawing. And that's Vietnamization.

MONROE. Senator Griffin, might the other side want to have a political settlement before a cease-fire, want some political arrangements to be worked out before they're willing to stop shooting?

Senator GRIFFIN. Well, it certainly—it might be their case. I can't say what they would propose. But this isn't beyond the realm of negotiation. It depends on what the political settlement is: whether it is acceptable to the South Vietnamese people.

The only condition in President Nixon's speech last night—and it wasn't attached to the cease-fire or the release of the prisoners of war—is that whatever political settlement is arrived at will be with the approval of the South Vietnamese people.

MONROE. Which would you expect the communists might put emphasis on in terms of dealing with first: a truce, a cease-fire, or a political settlement?

Senator CHURCH. They'll put emphasis on the political settlement for that's what this war is all about. It's been a civil war from the beginning. And, of course, the object of the war is the kind of government that's going to be established in South Vietnam.

The President's message last night widened the possibilities here. He stressed that he recognized that all factions in South Vietnam were entitled to participation in a government, although he was not precise about how this should be brought about. The indication to me was that we're willing to discuss some kind of a negotiated settlement, even a coalition government, so long as it is not imposed by force.

I welcome that. That's the most realistic approach yet advanced by this President or by any previous president.

MONROE. But your expectation . . .

Senator CHURCH. And I think this is a welcome move.

MONROE. Your expectation is that if the communists want to negotiate seriously they might want to do it while still fighting rather than go in for an immediate cease-fire?

Senator CHURCH. Yes, I think that would be their probable position. But as I say, the President's proposals I look upon as—and I think that he intended them to be—a method for getting the talks off dead center in Paris.

And I think that he's to be commended for that.

MONROE. Senator Griffin, do you see any possibility that there could be a prisoner exchange without there being an overall settlement?

Doesn't it look as if the communists don't seem to care much about the fate of their prisoners but do want to hang on to the Americans they have as hostages against . . .?

Senator GRIFFIN. Unfortunately, Bill, that has been the indication up till now that they're using it as the trump card. It is a fact, however, that the South Vietnamese hold many more prisoners than the North Vietnamese and Viet Cong do. In terms of numbers, they would have something to gain by agreeing to this. And I certainly hope they will. I just don't know what will happen, of course.

MONROE. Is the Vietnam War no longer a vital political issue, one of the top issues in this congressional campaign? Senator Church, you're not running in it so, perhaps, you're in a good position to make a comment on that.

Senator CHURCH. The war is very much on everyone's mind. But I feel that with this proposal, on which there's large agreement, and as long as the President continues to move in the direction of disengagement in Vietnam, that actually the two sides, the hawks and doves, are converging, coming much closer together.

Senator GRIFFIN. We have a political ceasefire here at the moment.

MONROE. Thank you very much, Senator Griffin and Senator Church. Now back to Ed in New York.

IT IS TIME FOR THE ENTIRE SENATE TO CONSIDER RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, more than 5 months have passed since hearings were held on the Genocide Convention. The time has come for the Foreign Relations Committee to report this convention to the Senate. All of us deserve the opportunity to discuss the issues involved, and in the final analysis, cast our vote on ratification of this most important human rights convention.

All matters of great importance must first be discussed and analyzed in minute detail by the committee which has jurisdiction. Certainly, no one can accuse the Foreign Relations Committee of not fulfilling this responsibility. The committee should be commended for their detailed and time-consuming effort in connection with the hearings on this convention.

However, time is running out. The entire Senate should be given the opportunity to consider ratification of the Genocide Conventiton. The postelection session of the Senate would be the most opportune time for us to consider this document. I urge the Foreign Relations Committee to act promptly on the Genocide Convention.

DECISIVE U.S. ACTION REQUIRED: THE MIDDLE EAST

Mr. TYDINGS. Mr. President, the momentary pause in military and diplomatic activities in the Middle East occasioned by President Nasser's death presents the United States with an excellent opportunity to reassess its real interests and responsibilities in this increasingly volatile part of the world. Such a reassessment is urgently needed. For in the confusion created by the accelerating succession of dramatic events that has dominated the Middle East over the past year, I fear our Government too often has lost sight of America's proper role in this critical region.

Though the future has been clouded by Nasser's sudden passing, certain aspects of the current Middle East situation remain clear:

First, every effort must be made to extend the 90-day ceasefire between Israel and her Arab neighbors into a permanent halt in the fighting. However, a lasting ceasefire only can come from honest negotiations and mutual respect. Any attempt to buy it at the price of Israeli security and American diplomatic credibility will result in disaster and yet another round of Middle Eastern warfare.

This means the administration cannot continue to acquiesce to the flagrant Soviet and Egyptian violations of the ceasefire agreement. The President must either induce the Soviets and their clients in Cairo to immediately return their missiles to their original preceasefire positions or openly provide Israel with the necessary aircraft and armaments to restore the balance of military power in the area.

As President John F. Kennedy often pointed out, if permitted the Soviets will assume the position in negotiations that "what is theirs is theirs, what is ours is negotiable." The President must make it absolutely clear to Moscow that we will never permit any Soviet violation of an international agreement to redound to their advantage or to that of their Arab clients. Failure to convince the Soviets of this will not only jeopardize Israeli survival, it will pose a serious threat to America's future.

Second, though we have an important role to play in the Middle East in seeking to bring the nations of the region to the peace table, a meaningful settlement can only be written by the parties to the conflict themselves. An imposed settlement will do no more than draw the boundaries for the next war. It is essential at this time that the President reaffirm the basic U.S. policy of direct negotiations between Israel and the Arab governments on all substantive points as the most efficient and effective way for peace to be achieved.

Third, it is clear Israel lacks the financial means to purchase all of the aircraft and weaponry necessary to maintain the Middle East balance of power when her Arab adversaries are receiving enormous grants of military assistance from the Soviet Union. Israel already is devoting nearly 80 percent of her budget to defense. Unless the United States is willing to offset this massive Soviet effort to arm Egypt with economic assistance to Israel, Israel will soon be overwhelmed.

The State Department has talked a great deal about economic assistance for Israel. But so far, it has offered only talk. It is time for the administration to put its money where its mouth is before the balance of power in the Middle East is destroyed and war erupts again.

Fourth, peace cannot come to the Middle East until the Arab governments renounce both the objectives and the tactics of the Palestinian terrorists. However, point 14 of the Arab Accord on Jordan signed 2 weeks ago by nine Arab governments and Yasir Arafat, head of the Palestinian terrorists, pledges the Arab nations to back the terrorists in their "objective of full liberation and the defeat of the aggressive Israeli enemy."

The President should inform the Arab states that the United States condemns such statements endorsing the terrorists as destructive of the prospects of a permanent peace in the Middle East.

Fifth, immediate action must be taken to put an end to the hijacking of international airline flights and the kidnaping of innocent passengers. The administration should use its full diplomatic powers to secure an international treaty insuring the suspension of airline services to and from any nation that fails to prosecute or extradite a hijacker and denying air service anywhere in the world to the citizens of nonsignatory nations. It is not enough to condemn air piracy. Indignation is cheap. What we need is meaningful international action.

Mr. President, America has a firm commitment to the survival of Israel as a Jewish homeland and to the preservation of U.S. influence in the Middle East. Yet, unless the administration is willing to accept and act upon the five inescapable realities I outlined above, I fear we will fail in these objectives no matter who succeeds Nasser.

I have taken the Senate floor on many occasions during the past 18 months to urge this administration and the State Department to take decisive action in the Middle East. But never with such urgency. For time is running out.

SENATOR STEVENS DEMONSTRATES CONCERN FOR COMMONSENSE CONSERVATION

Mr. ALLOTT. Mr. President, the very able senior Senator from Alaska, (Mr. STEVENS) has in the years I have known consistently demonstrated his concern for sound, commonsense conservation. For example, he has introduced legislation to create conservation savings bonds, and was instrumental in creating the Environmental Quality Council.

Last year, the senior Senator for Alaska ruffled the feathers of some outspoken preservationists by calling upon them to come up to Alaska and join in the effort of developing that State on a positive basis and with some commonsense.

After Senator STEVENS' statement last year, a concerted drive began to discredit both the senior Senator and the incumbent Governor of Alaska. Recently, Stanton H. Patty, a reporter for the Seattle Times, wrote an excellent article in answer to the attacks being made upon Senator STEVENS and Governor Miller. I ask unanimous consent that the article be printed in the RECORD.

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

CONSERVATIONISTS' ATTACKS ON ALASKANS NEED REFUTING

A New York-based conservation group is joining with an organization in Alaska in a nation-wide drive for $150,000 to help defeat certain candidates in Alaska's general election.

The targets include Senator Ted Stevens and Gov. Keith H. Miller. Both are under attack for what is called their "insensitivity . . . to the needs and the fragility of the Alaskan ecology."

The League of Conservation Voters, New York, has mailed fund appeals to 5,000 prominent conservationists. The league is affiliated with Friends of the Earth, which also is a principal foe of the supersonic transport.

"In Alaska we face some of the most crucial elections in the nation," the league said in a letter, dated in June, in which it announced it would contribute to the Alaskan Environmental Fund. ". . . Please give as much as you can."

The Alaskan Environmental Fund, with headquarters in Anchorage, meanwhile published 1,500 numbered copies of a booklet containing harsh criticisms of Miller, Stevens and others.

"Alaska faces environmental disaster . . . Alaska's environment will be won or lost in the political arena," the booklet says. "Money is the lifeblood of politics."

This writer takes no sides in the election races involving Miller and Stevens. But the Alaskan Environmental Fund's pamphlet contains a number of statements that need to be corrected or explained:

Item: "After more than ten years of statehood Alaska has not a single state park, not a single wilderness area, and a completely inadequate system of family camping units."

The truth is that the 1970 Legislature estabished—and Miller signed the bills—projects including the new Chugach State Park near Anchorage (512,000 acres) and Denali State Park near Talkeetna (300,000 acres).

No wilderness area? Most of Alaska is wilderness.

Meanwhile, because of a federal land freeze imposed because of unsettled native land claims, Alaska has received little of its promised legacy of 103 million acres due the state from the 1958 Statehood Act.

The federal government still has control over about 95 percent of Alaska's land mass. A report of the Federal Field Committee says federal agencies—from the Interior Department to the military—are the landlords for more than 358 million of Alaska's 375 million or so total acres. The imbalance is all the more serious because the federal withdrawals are heavy in land under the 4,000-foot altitude, the most habitable and useful parts of the state.

Alaska alone has 17 units, totaling 18 million acres of the national wildlife-refuge system.

Item: The fund says a bounty still is "enforced" on wolves, which it terms an "endangered species."

Payment of wolf bounties ended July 1, except in Southeastern Alaska where the Alaska Fish and Game Department says a large wolf population threatens deer. The department does not consider the wolf to be endangered in most sections.

Item: "State policies dealing with the environment do not reflect the wishes of the great majority of Alaskans because of a political power structure supported by and catering to development."

Who says so? This is not what Alaska voters indicated in the recent primary election when Miller, Stevens and others who favored oil development won nomination.

And where is the fund's documentation of industry support, financial and otherwise, for certain candidates?

Item: the booklet says there has been a lack of state water-pollution-control enforcement and mentions "slipshod" fisheries regulations.

The record shows that Alaska has moved swiftly to penalize polluters, including tankers dumping oily ballast. The State Fish and Game Department is respected widely by the United States fishing industry for its personnel and tough regulations and enforcement.

Item: Senator Stevens, the fund says, denied that the Navy has damaged the land in Naval Petroleum Reserve No. 4 in the Arctic.

The record shows that Stevens in March of this year asked the Navy to clean up a "deplorable situation" of rusted oil drums and debris in this 37,000-square-mile area from Navy-sponsored oil explorations between 1944 and 1953.

Item: Stevens was taken to task for a speech in August, 1969, in which he was quoted as saying: "I'm up to here with people who try to tell us how to develop our country . . . who come up here and try to tell us what to do."

Stevens was angry, all right, about Alaska's constant harassment by outside preservationists. But in the same address he also said:

"We are trying to preserve Alaska as it is so that our sons and daughters can use it, too. I'm up to here with people trying to tell us how we can develop our country without trying to come up and join us. If we really get together and plan the development of the Arctic country we can work together. But I urge you to do it on a positive basis and with some common sense."

Stevens also noted that he worked with former Interior Secretary Fred Seaton to set aside the Arctic National Wildlife Refuge in 1960.

"After the conservationists won the battle and set aside 9 million acres, they forgot about it," Stevens said. "Not one dollar was appropriated or requested for the range (refuge) since we created it."

Item: Governor Miller is "unfamiliar" with the Alaskan environment, according to the booklet.

That really is laughable. Miller was a homesteader in Alaska long before he entered politics. He has traveled to every section of the state since.

Item: Stevens was accused of saying he wanted to withdraw the Katmai National Monument.

The fact is that Stevens, while opposed to expansion of the 2.6-million-acre monument, has suggested that it and others be made into true national parks. Katmai already is the largest monument in the national-park system.

CONDITIONS IN THE SOUTH BRONX: JOINT STATEMENT OF SENATORS JAVITS AND McGOVERN

Mr. McGOVERN. Mr. President, more than a week ago, the Senator from New York (Mr. JAVITS) and I made an inspection of the Morrisania section of the South Bronx in New York City.

Senator JAVITS, a life-long resident of New York City, who spent his early years in a lower East Side ghetto, and I were equally appalled by the squalor and despair we witnessed.

We made this tour as members of the Senate Select Committee on Nutrition and Human Needs. It was a most appropriate tour for our committee since unquestionably this is no longer solely a housing crisis; it has transcended that to basic questions of human needs.

We saw people living in abandoned buildings without heat or other services. We saw children playing in the ruins of burned out buildings. We talked with people who live everyday with the threat of fire, disease, and vermin. We talked with mothers who live with the fear of epidemic disease.

The doctors who accompanied us told us of the medical results of these deteriorating and dilapidating buildings—children hospitalized with lead poisoning, wide spread incidents of upper respiratory infections amongst schoolchildren brought on by the inadequate heat, dampness, and overcrowding.

All this is frightening enough without the realization that a fuel crisis and the threat of mass abandonment lie ahead this winter.

In response to this emergency, Senator JAVITS and I have sent the following letter to the President suggesting an immediate intervention program.

We feel confident that the President, once he is fully aware of the dimensions of this problem, will respond to it with the same sense of urgency we now feel and have attempted to express in our communication to him.

We respectfully ask unanimous consent that the letter be printed in full in the RECORD.

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

WASHINGTON, D.C.,
October 9, 1970.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: On Saturday, October 3, 1970, we spent the morning studying housing conditions in the Morrisania section of the South Bronx. What we saw was an unbelievable disgrace. The once bustling streets of this community now resemble a bombed out disaster area.

We were both appalled by what we saw and cannot imagine what it is like for these families who must spend their lives in such squalor and despair!

We saw street after street of abandoned and burned out buildings stripped by addicts; dangerous and on the verge of collapse, yet open to neighborhood children;

We saw families squatting in abandoned and un-inhabitable structures with no services whatsoever, living with rats and filth, waiting for winter. The South Bronx is developing a subculture;

We saw vacant lots, alleys, sidewalks, streets and buildings caked with garbage, debris and waste;

We saw cleared sites littered with years of rubble and neglect;

We saw tenements with no safety devices, dark and fouled hallways, crumbled interiors and non-functional utilities;

We talked to mothers who live with the fear of epidemic disease such as plagued this area last summer when viral meningitis leaped from the sewers to the streets of this community.

We saw and spoke to human beings whose single voice was despair and fear.

All this is frightening enough without the realization that a fuel crisis and the threat of mass abandonment lie ahead this winter.

Against this background, the available statistics show the South Bronx to be a disaster area rivalled only in its deterioration by the Brownsville section of Brooklyn which

our colleague, Senator Ribicoff, recently inspected.

Eighty percent of all housing units in the South Bronx Model Cities Neighborhood (which contains about 80% of the entire South Bronx population) are in a state ranging from moderate deterioration to dilapidation. Of 85,000 Model Cities Neighborhood apartments, 67,000 are obsolete or otherwise sub-standard. The bulk of residential structures—about 50%—are in old and new low tenements offering none of the light, floor space, air, common areas or other amenities properly associated with decent, safe and sanitary housing. Overcrowded to begin with, apartments are subdivided to pack more and more people into limited space.

The supply of housing in the South Bronx is steadily diminishing. Approximately 4,000 units, or 5% of the total housing stock, are taken out of the supply each year due to demolition, deterioration and abandonment.

Any reasonable estimate of housing needs in the South Bronx would range from 50,000 to 70,000 units, most of which would have to be assisted by rents subsidized under government programs. The enormity of the South Bronx's problem is put in perspective when one considers that in the last ten years, the United States built only 634,000 publicly assisted units—an average of 63,000 units per year for the entire country and the State and City started 112,400 units under all programs in New York City.

This state of affairs in the South Bronx and throughout New York City's depressed communities is ample evidence of our failure to meet our national goal to provide a decent home for every American at prices he can afford.

Perhaps most disturbing to us is the fact that the housing crisis in New York City and in other cities is solvable. We can develop the solutions and the tools, if only we have the will. We have done it in the past and we can do it again. In fact, New York State has made pioneering efforts in the last several years to help alleviate the tremendous problem in New York City and throughout the State. In 1968, the Urban Development Corporation was formed to construct housing and recently the Housing Finance Agency was formed to provide a secondary mortgage market for housing. However, federal help is still essential to solve the problems in areas like the South Bronx.

If this area were today a healthy community without blight and tomorrow was struck by a natural disaster, we would begin on Monday a massive influx of money and technical assistance such as we provided to Anchorage after the earthquake and the Gulf Coast after Hurricane Camille.

This is also an emergency and it must be treated as such.

Therefore, we propose an immediate Intervention Program which would include a Disaster Task Force such as we send into hurricane ravaged areas to provide emergency medical treatment, mobile health units, community contact workers, necessary food and warm clothes; and most importantly, an Emergency Repair Force to make safe and workable the electrical, heating and water systems within these dilapidated and dangerous structures that house hundreds of thousands. We are prepared to vigorously support any recommendations made in this regard. We also suggest that City banks be persuaded to declare a moratorium on foreclosures, as was instituted during the depression, in order to prevent the mass abandonments that are predicted for this winter when a large number of mortgages will come due. As part of this plan, we propose an assigned risk pool for mortgages, as presently exists for fire insurance, to compel banks to make money available in these areas at reasonable rates, such as 7½ percent, per annum. For decades the financial institutions have taken money from areas like the South Bronx; it is now time for them to take part of the responsibility for these areas and put back some of that money in order to save these communities from abandonment.

This program that we proposed is in no way meant to conflict with the recently Senate-passed abandonment bill which provides 25 million dollars for experimental approaches to the amandonment problem. We are simply talking of the immediate emergency that confronts us and proposing an immediate Intervention Program to meet it now.

We believe at least fifty million dollars is necessary to adequately meet this emergency and are willing to urge full support for this appropriation in the Senate.

We are certain that the necessary funds for this crash program can be found, as we have found means in the past to deal with every great emergency that has faced this Nation, and suggest that applicable sources may exist in the Disaster Relief Act; Health Services at the Department of Health, Education, and Welfare and the Housing Rehabilitation program at the Department of Housing and Urban Development.

We believe that any emergency message which might be sent to the Congress including a request for supplemental appropriations to meet this emergency in the South Bronx and wherever else similar conditions may exist would receive the support of many of our colleagues.

Respectfully,

GEORGE MCGOVERN.
JACOB K. JAVITS.

TWO POLITICAL PRISONERS

Mr. CHURCH. Mr. President, there is a chilling similarity about the ways of political repression, regardless of the label it bears. This was recently noted in an editorial in the Rexburg, Idaho, Standard of September 22, 1970, drawing attention to the fact that in both the Soviet Union and Taiwan those individuals—the author Yuli M. Daniel in Moscow and the politician Lei Chen in Taipei—who oppose their governments were sentenced to 5 years and 10 years in prison respectively.

I agree fully with the conclusion of the editorial that—

Totalitarianism, far from being the exclusive province of the Communists, is where you find it.

I ask unanimous consent that the Rexburg, Idaho, Standard editorial be printed in the RECORD.

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

TWO POLITICAL PRISONERS

Not long ago the day's news included two items alike in some respects but not in others. The similarities and differences are instructive.

One of the stories was datelined Taipei, Taiwan—the capital of Chiang Kai-shek's Republic of Taiwan. The other was a dispatch from Moscow. Bear in mind that, whereas the latter is the governmental center of the world's most powerful Communist nation, the Chiang government has been a bitter foe of the Communist regime in Peking ever since the exodus to Taiwan two decades ago.

The curious thing is that both of the news stories in question concern the release of a political prisoner. In Moscow the dissident author Yuli M. Daniel was set free after serving a five-year term for "slandering the Soviet state." In Taiwan the prison doors opened after 10 years for Lei Chen, a former member of the National Assembly. His crime (though ostensibly he was sentenced for harboring an alleged Communist agent, his secretary) was that he spoke out against the Chiang government and sought to form an opposition party composed of native Taiwanese and dissident mainlanders.

The striking thing is that although the governments of Moscow and Taiwan are poles apart with regard to Communism, neither can stomach outspoken opposition. Moscow's Communist regime clapped Yuli Daniel in jail because he had the gall to find fault with that regime in works published abroad. The anti-Communist regime in Taiwan was so afraid of Lei Chen's pen and politics that it put him out of circulation for a decade—and has now forced him to sign a "guarantee" that he will refrain from writing or saying anything unfavorable to the government.

Conclusion: Totalitarianism, far from being the exclusive province of the Communists, is where you find it.

THE NIXON PROPOSAL ON WELFARE

Mr. ALLOTT. Mr. President, the top left-hand side of the front page of Friday's New York Times contains two stories, each of which is interesting, and which, taken together, tell an important story.

The first story is headlined "Senate Unit Bars Nixon's Proposal on Welfare, 14 to 1." It concerns Thursday's decision by the Finance Committee that it would be inappropriate at this time to plunge into a full-scale endorsement of the so-called family assistance plan.

The second story is from New York City, and is headlined "Relief Cases Here Rising at Three Times Expected Rate."

The subheadline on this story says: "Continuance of the Average of 16,544 for July and August Could Increase Year's Cost by $60 Million."

These two stories indicate one thing very clearly: the Finance Committee took a very sensible and prudent decision Thursday.

The members of this committee have been admirably conscientious in examining the complexities of the welfare problem in general, and this particular proposal for coping with it. They know better than any of us how difficult it is to unravel the many related features of this problem. They know that we simply do not know enough now to proceed with a massive effort down a new and unexplored road.

Dramatic proof of how little we can predict the course of relevant events in the field of welfare is given by the story about the New York City welfare crisis.

There are moments when it seems that there are almost as many people studying welfare in New York as there are people on welfare there—and that is a lot of people. Thus it is especially significant that the recent explosive rise in relief cases in New York caught all the professional welfare experts by surprise. After prolonged and extensive study, the experts came up with an estimate concerning how fast such cases would increase. They did not even come close. The actual increase was three times the size of the projected increase.

I am not faulting the dedicated, competent men who are professionally concerned with our Nation's welfare pro-

grams. The inadequacies in their projections reflect no personal inadequacies. Rather, they reflect weaknesses in the arts of what we like to call the social sciences.

The fact is that our society is a lot more complex than we sometimes think, and the relationships between various events and trends are not easy to predict. As a result, the future is often opaque until it is upon us.

Nevertheless, prudence and a sense of responsibility should encourage us to make one kind of projection. We should consider what would happen if we enacted a bold and untested new program such as the FAP, and it turned out that the experts who have estimated its cost were off by as much as the New York experts were off in their estimates. Remember that the New York people only had to project the developments in one city. The proponents of the FAP have to make a comprehensive guess about the shape of the future in a continental Nation.

Just suppose the men advocating the cost of the FAP are in fact as accurate as the New York men. Suppose the advocates of the FAP are estimating costs which are only one-third of what the real costs will be.

This is an ominous thought. But it is not a possibility we can ignore. This is one reason why I think the able members of the Finance Committee have acted prudently in refusing to plunge down an uncharted—and, at the moment, unchartable road.

Mr. President, this morning I have not addressed myself to the myriad issues and problems involved in the very idea of federalizing welfare. It would be premature to arrive at fixed opinions on these issues. I am content to await the report which will distill the findings of the able members of the Finance Committee.

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

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

SENATE UNIT BARS NIXON'S PROPOSAL ON WELFARE, 14 TO 1

(By Warren Weaver, Jr.)

WASHINGTON.—The Senate Finance Committee rejected President Nixon's welfare reform plan today by a 14-to-1 vote, dealing a serious blow to the Administration's top-priority domestic legislative program.

The committee approved instead a proposal to test the President's Family Assistance Plan and at least one alternative welfare program in a group of cities for a year or more before any new legislation with national effect is enacted.

The only vote for the Administration's welfare bill was cast by Senator Fred R. Harris of Oklahoma, a former Democratic National Chairman. A week ago he was telling friends that he regretted that he had committed himself to the legislation.

SUPPORTERS PLAN MOVE

All six of the Republican committee members present voted against the President's program, including Senator Wallace F. Bennett of Utah, who had endorsed the welfare bill. The other Republicans had all criticized the plan in varying degrees in the committee hearings.

The committee's action did not kill welfare reform for this Congress, although it certainly stunned it. Backers of the Family Assistance Plan will now offer it as a floor amendment to the Social Security increase measure that is scheduled for Senate action in mid-November, shortly after the campaign recess.

Senator Russell B. Long, Democrat of Louisiana, the Finance Committee chairman, predicted that the Senate would follow the committee's lead in rejecting the welfare reform program. Other Senators have expressed increasing doubt that the plan has the 50 to 60 votes its backers claim.

The Administration put the best face it could on the committee's action. The Secretary of Health, Education and Welfare, Elliot L. Richardson, emphasized in a statement that the bill voted down was the version of the Family Assistance Plan approved by the House last April, without subsequent improvements.

When the Finance Committee meets again next Tuesday, officials of the Welfare department will submit still another version of the Family Assistance Plan, incorporating changes suggested by various Senators and providing that it will go into effect on a specific date if Congress does not disapprove before then.

"Should the committee report out a bill providing only for a family assistance pilot or experimental program," Mr. Richardson said, "the Administration will fight on the floor of the Senate to add a complete family assistance program."

RICHARDSON PLEDGES FIGHT

He said that he believed "a substantial majority" of the Senate would support such a fight.

Administration officials also professed to draw some comfort from the fact that the issue now seemed assured of a vote on the floor. They had feared that Senator John J. Williams, the chief Republican critic of the plan, would tie welfare reform up in committee until Congress adjourned.

Welfare is not the only extraneous subject that the Senators will try to attach to the Social Security bill. Senator Long reported today that a move would be made next Tuesday to propose as an amendment to the trade bill that has been approved by the House Ways and Means Committee.

To provide some background for that decision, the Finance Committee will hold hearings tomorrow and Monday on the legislation, which tends to restrict free trade by establishing import quotas for some products.

The Social Security bill, which increases benefits now and provides for future increases tied to the Consumer Price Index, is one piece of Legislation certain to be approved before Congress adjourns.

It thus is an inviting measure for other bills, with less chance of success, to be attached to as amendments.

"Social Security may be the last train through the station," Senator Long said today, "and, if it is, they'd better be aboard it."

The Administration's welfare program would abolish the present Aid to Dependent Children category and guarantee families, through a system of Federal benefits, an annual income of $500 for each parent and $300 for each child, or $1,600 for a family of four.

Even if one or both of the parents took marginal jobs, becoming members of the "working poor." Federal benefits would continue tapering off as income rose and disappearing when income reached $3,920. All recipients would be required to register for work and accept training or jobs as they became available.

PLAN INVOLVES "WORKFARE"

The proposal for a test run for the Family Assistance Plan and an alternative in selected cities was approved by the committee, 9 to 3, with Senators Harris, Clinton M. Anderson of New Mexico and Eugene J. McCarthy of Minnesota opposed.

Senator Long said that the alternative plan would involve what he called "workfare," paying Federal benefits to low-wage workers through their employers but not providing similar assistance to the unemployed.

As a last resort, the Administration tried to get the committee to adopt the Family Assistance Plan with an automatic future effective date, after experiments had been completed, but with Congress empowered to keep it from becoming effective by a negative vote. The committee rejected this, 9 to 4.

RELIEF CASES HERE RISING AT THREE TIMES EXPECTED RATE—CONTINUANCE OF THE AVERAGE OF 16,544 FOR JULY AND AUGUST COULD INCREASE YEAR'S COSTS BY $60 MILLION

(By Peter Kihss)

Skyrocketing relief rolls for the first two months of the city's new fiscal year have tripled the increase forecast in Mayor Lindsay's budget and could add as much as $60-million in new costs if the new rate keeps on.

Jack R. Goldberg, Commissioner of Social Services, said yesterday that he had warned Mayor Lindsay of the new problem after reports showed a July increase of 17,932 welfare recipients and preliminary data indicated an August rise of 15,156 more.

The figures represent a monthly average of 16,544 more persons going on to the relief rolls, compared with the budget's forecast of an average monthly rise of 5,500 for the year started July 1. The sudden upsurge began in June, with a rise of 13,677, the sharpest increase then in 15 months.

In an interview, Commissioner Goldberg said: "What we are seeing is the net effect of the Federal Administration's handling of two issues—unemployment and inflation."

Given "the current fiscal crisis of the cities," he declared, the Federal and state governments should take over the welfare burden or at least larger shares.

He said there was "a massive need to provide more job opportunities in the private and public sector." Inflation, he said has "everybody in a squeeze," but most of all "the poor people at the bottom of the pile."

"I think we ought to introduce immediately necessary wage and price controls," the Commissioner said.

The State Labor Department has reported New York City unemployment in August at a rate of 4.0 per cent of the labor force, up from 2.9 per cent a year ago. The city's rate was well below the nation's 5.1 per cent in August, which rose to 5.5 per cent in September.

The cost of living, as measured by the Federal consumer prive index for urban wage earners and clerical workers, rose 7.6 per cent between August, 1969, and last August on the New York-Northeastern New Jersey area.

RELIEF ROLLS SHOW 1,111,077

The new reports brought the total number of persons on relief in the city to 1,111,077 in 423,017 households. Henry J. Rosner, assistant commissioner of social services, said each person on relief averages roughly $1,000 a year in grants, including rent.

The new city budget had estimated $1.1-billion would be paid out in cash grants for the year starting July 1. An average increase of 11,000 people a month above the budgeted 5,500 could mean a cost of $60-million more over the year, Mr. Rosner said.

Commissioner Goldberg said about $18-million of such a rise would have to be met out of city tax levy funds. The rest would be paid by the Federal and state governments, which mandate welfare policies.

Month-by-month increases in number of persons on relief here (except for decreases in February, 1969, and May 1969) have been as follows:

Month	1968	1969	1970
January	19,695	16,971	7,002
February	9,655	−2,985	2,768
March	13,344	14,036	4,727
April	11,499	4,267	4,769
May	16,440	−1,866	5,430
June	14,258	3,348	13,677
July	23,575	2,992	17,932
August	20,301	7,048	15,156
September	19,617	6,543	
October	23,111	3,854	
November	1,875	1,207	
December	17,643	5,839	

SHIFT WAS FORECAST

In its original budget estimate last January, the Department of Social Services warned that "there are many factors at work over which the city and the department have little control," which could reverse earlier slowdowns.

The estimate then cited national economic policy, migration patterns, birth rates among the young and poor, state grant levels and national welfare policy. State grant levels did go up from about $3,720 a year to $4,000, in payments starting last June, widening eligibility, Commissioner Goldberg noted.

He said the department had found persons eligible for the relief rolls but not yet applying numbered at least 116,607. These are individuals who have applied for the Medicaid program, whose income ceiling is $5,000, but who actually are poor enough to apply for welfare. The rise in such persons has averaged 8,500 a month during June, July and August.

The department said there had been a 71 per cent increase in monthly acceptance of cases from November to July because of job layoffs, exhaustion of 26-week unemployment benefits and health reasons in home relief and Aid to Dependent Children categories.

A 35 per cent increase in acceptances in the family category between December and July was reported based on desertion, divorce or separation. At the other end of the system, the number of cases closed because clients found jobs fell 42 per cent from the 1,899 in August, 1969, to 1,099 last July.

THE FITZGERALD CASE: 323 DAYS OF INACTION

Mr. PROXMIRE. Mr. President, it has now been 323 days since I wrote to the Justice Department about A. Ernest Fitzgerald. I wrote requesting an investigation into the Air Force's intimidation and firing of Mr. Fitzgerald after he testified before Congress about the $2 billion overrun on the C–5A transport plane. But there has been no action on the case.

Mr. President, several decades ago, Congress realized that its access to information might be severely restricted unless witnesses who testified before congressional committees were assured that no retribution would be visited upon them for their testimony. As a result, Congress enacted 18 U.S.C. 1505, which makes it a crime, punishable by up to 5 years in jail, to threaten, to intimidate, or to injure a witness on account of his testimony to Congress. The legislative history of this statute makes it clear that Congress regarded loss of a job as the type of injury covered by the law.

Mr. President, Mr. Fitzgerald lost his job because of his testimony to the Joint Economic Committee. Those who are responsible for firing him must bear the consequences under 18 U.S.C. 1505. To fail to take action against the perpetrators—as the Justice Department has failed to do—is to make a mockery of the criminal code, and to impinge upon Congress' access to information.

There is no justification whatsoever for the Justice Department's delay on this. Only prompt and effective action on this case can restore the public's confidence in the Justice Department's credo: "Equal Justice Under Law."

HEALTH CARE IN THE UNITED STATES—ADDRESS BY SENATOR MURPHY

Mr. DOMINICK. Mr. President, as ranking Republican on the Senate Labor and Public Welfare Subcommittee on Health, I have had the pleasure of working with Senator GEORGE MURPHY on health matters since 1965. Senator MURPHY's contributions to the health measures that have been enacted during these past 6 years are many. His most recent effort was the introduction of S. 4208, the Family Physician Scholarship and Fellowship Program Act, which I was pleased to cosponsor along with 22 other Senators.

Senator MURPHY recently made a speech in Los Angeles for some of California's most distinguished citizens in the areas of health, education, finance, and industry. His subject was health care in the United States, and his speech is entitled, "A Crisis for the Nation—A Challenge and an Opportunity for California."

Because of the importance of this speech and the experience that Senator MURPHY brings to bear when he speaks in the health area, I ask unanimous consent that his remarks be printed in the RECORD.

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

HEALTH CARE IN THE UNITED STATES—A CRISIS FOR THE NATION—A CHALLENGE AND AN OPPORTUNITY FOR CALIFORNIA

I. INTRODUCTION

We are all aware, I believe, as the Nixon Administration warned in 1969, that our nation's health care system is on the verge of a massive crisis. The rapidly mounting cost, the difficulty of obtaining medical care, the lack of progress against the major causes of death and suffering, gravely affect the lives of all Americans.

I have brought you together this morning—this notable gathering of the top leadership in almost every phase of California activity—to ask that you join me in an effort to solve this national problem, and in so doing that we work toward making our State of California the Health Center for the United States.

Over the years we in California have shown tremendous initiative and ingenuity in supplying the needs of a growing nation and an ever more complicated society. By harnessing a water supply we have converted arid lands into the bread basket of the nation; our businessmen and workers have combined to lead the way in providing Americans with the products of a modern industrial society and, when necessary, in producing the military schoods necessary to keep us the strongest nation on earth; our financial institutions have been in the forefront of developing modern means of financing private homebuilding.

And so what I now propose seems only a logical extension of our state's past accomplishments—that we should recognize that this national crisis presents both a challenge and an opportunity for Californians. I hope you will agree that this can be a fascinating and gratifying adventure for us all.

We are all hopeful that world affairs some time soon will allow us to convert our defense industry into nonmilitary applications. I can think of no more exciting or appropriate role for California's aerospace and defense-oriented industries than to participate in the development of an advanced health care system and so to provide jobs for tens of thousands of California workers in this worthwhile new endeavor. It will be healthy for California to provide good health to the nation.

Let me say at the outset that I claim no expertise in the technical aspects of medical care. But I do claim that in this room there are experts, men such as those who have solved the great problems of our nation's past. The problem we discuss today is one whose solution, like so many, requires not just dollars: organization, coordination and a systematic approach to the problem can do what dollars alone will never do. As a United States Senator from California, I hope that I can provide some leadership in undertaking such an approach with you and with others like you throughout California who hopefully will join our crusade.

I want this morning to outline some avenues which I think our efforts might take in seeking to make California the Health Center of the Nation.

Before describing what's wrong with our present health care systems, I want to make very clear my admiration for all who are presently engaged in the health professions and for the tremendous advances they have brought to our country. The diversity and complexity of the elements involved in this problem require the application of our entire community for their solution. The health professions alone cannot and should not be saddled with this responsibility as I am sure they would be the first to agree.

In our undertaking we must, of course, turn first for counsel and advice to those who have made the miraculous advances in medical care in recent years.

The list of these advances is long. Our surgeons have learned how to transplant vital organs such as the heart and the kidneys. Our engineers have developed a wide variety of artificial organs and prosthetic devices. Vaccines have been developed for polio, measles, mumps, and chicken pox. Methods have been found to reduce the mortality from heart attacks by 20 percent. New drugs have dramatically reduced the number of patients in mental hospitals. Antibiotics have been extremely effective in treatment of bacterial infections, once the leading cause of death in the United States.

The efforts of the men and women in our health care system have shown remarkable results in many respects. Since 1900, death rates in the United States have declined remarkably. The mean death rate in 1950 was approximately one-third of the corresponding value in 1900.

II. THE PROBLEM

Although we can be justly proud of many aspects of our health care system, it is becoming increasingly clear that the system is failing in many ways. Probably the most obvious symptom is the recent increase in health care costs.

Most middle-class families in America can no longer afford adequate health care, and a prolonged illness can mean financial disaster. During the last five years, the cost of health care has been rising at double the rate of the cost-of-living increase. Our national expenditures for health care have risen from 37 billion dollars in 1965, to 63 billion in 1969, an increase of more than 70 percent. The cost of hospital care has been rising 16 percent each year. In many ur-

ban areas the average expense of one day's stay in a hospital has reached $100 a day. The average yearly per capita expenditure for health care in the United States is $300.00; thus a family of four might expect to pay $1,200 each year for health care.

Another symptom of the problems in the health care system is that access to care is becoming increasingly difficult. Few physicians are able to make house calls, and in many areas it is becoming a problem to obtain an office appointment. The number of physicians seeing patients has declined from 103 per 100,000 Americans in 1950 to 94 in 1969.

Those health workers we do have are distributed unevenly throughout the country, and not necessarily according to need. Urban areas have twelve times as many doctors as all communities with a population of 10,000 or less—but have only 5 times as many persons as the small communities. And certain disadvantaged areas in our country have difficulty in attracting the doctors needed even for minimal care. That is why I have introduced in the Senate a Bill which will provide government assistance for medical training to students who will agree to practice in medically disadvantaged areas. This program will help both to train needy students of medicine and to provide doctors to needy areas.

Some of the failings of our health care system are reflected in the nation's mortality and morbidity statistics. The United States ranks 13th (behind several West European countries and New Zealand) in infant mortality and behind most of these countries in maternal mortality and death rates from heart diseases and cirrhosis of the liver. Our life expectancy has remained essentially unchanged since 1955.

Our health care system cannot be held entirely responsible for our bad showing in these statistics. Many of us eat too much, drink too much and smoke too much. We don't get enough exercise and we drive our cars unsafely. All of these factors increase our rate of death and suffering.

The fact remains, however, that the list of leading causes of death and disease in this country has changed little during the past 20 years. Heart disease, respiratory disease, cancer and stroke still strike down hundreds of thousands of us each year. Arthritis, ulcers and mental illness afflict additional millions of citizens.

It is true that we have come a long way in improving our health care, but we have a long way yet to go. The cost of health care has become intolerable for many; progress in alleviating our major health problems has been disappointingly slow.

In the past public and political discussion of health care has tended to revolve around how we should help individuals to pay for medical care. I believe we should concentrate our attention on a more basic question: how can we improve the quality and quantity of medical care, the efficiency of its delivery to the individual, and bring health care within the means of our citizens? It is time to tackle our health care problems in new and revolutionary ways. I am asking you today to join me in this adventure.

III. THE SOLUTION

A. The Goal

I propose that we develop a new health care system by which California will provide 21st Century medicine within the next decade. The objectives of this system will be:

To provide all citizens with comprehensive health care at a price they can afford.

To reduce death, suffering and disability from our major health problems, including heart and lung disease, stroke and cancer.

To develop and implement new methods of preventing sickness before it occurs, by such measures as screening clinics and vaccination programs, and by mobile units which take a diagnosis capability to areas where it is needed.

To provide health care that is satisfying in human terms, both to those who receive care, and to those who give it.

California has the intellectual and industrial resources necessary to make such a system a reality. The leadership of these resources is represented in this room this morning. I believe that the time has come to ask our scientists, engineers, architects, our workers and our business executives, and our finance leaders, and others to join with the men and women in the health care system, and to begin development of a new health care system, one that will make California the world leader in health care delivery. Californians have given the nation the most advanced military capability in the world; they have engineered that "giant leap" by which Neil Armstrong placed the stars and stripes on the moon. I know that the same teamwork and application of basic science, properly directed and cordinated, can provide a practical and effective means of delivering modern medical care to the people of the United States.

B. General Approach

Before presenting my specific proposals on how to proceed in developing our health care system, let me comment briefly on the principles I believe should be followed.

First, most such problems must be solved at a local level. Solutions developed by the people who must live with them are much more likely to work than those devised by bureaucrats dealing in theory and wishful thinking. Thus, I believe that our new health care system should be developed here in California. (Although federal support will be necessary, we mustn't expect our health problems to be solved simply by passage of legislative programs in Washington.)

The second principle is that we should try to build on the progress we have already made, rather than to destroy what exists and begin all over again. This means that we must preserve the good in the present system and apply our capabilities to its improvement. It also means that we must expect that a multidisciplinary effort involving the talents and insight of many fields—engineers, economists, computer specialists, social scientists as well as physicians and nurses—will be necessary to build our new health care system.

The third principle is that it is clearly better to build complicated systems one step at a time, testing and evaluating each part before proceeding to the next. The experience of our space program has confirmed the wisdom of such an approach. The components of the moon rocket and its satellite were developed and tested a step at a time, first singly and later as a unit. We began with suborbital flights and proceeded to earth orbital flights, then to trips around the moon and, finally, to a landing on the moon itself.

I believe that our new health care system should be developed in such a step-wise fashion. I cannot now propose the exact form that the new system should take, but I can, and I intend now to try, with your help, to get that step-by-step development process into motion, starting with improving our method of delivering our present capabilities.

A final principle is that, although money will be required to solve our health care problems, unless it is used carefully, it is almost as likely to make the problem worse as it is to cure it. The experience of our Medicaid program provides an excellent example of the terrible consequences that can result from trying to solve a complex problem simply by expending massive amounts of money.

The objective of the Medicaid program was to provide more health services for the poor, unquestionably a laudable goal. This year the government will spend more than 5 billion dollars per year in pursuit of this objective. The program has now been in operation for nearly 5 years and its disturbing consequences have begun to emerge.

The statistics show that the Medicaid program has indeed accomplished its objectives: the poor *are* receiving more health care. The difficulty is that the capacity of our health care system has been relatively fixed and it has been running at full utilization. Thus the added health care given to the poor has had to be taken from someone else. The results show, therefore, that although the poor are now receiving *more* services, others in our society are receiving less. We have simply shifted the problem from one group to another. And with the supply fixed and demand increased, the cost of medical care has naturally skyrocketed. We are not delivering any more medical service—we are just spending more for the same amount of service.

As we develop our new system it will, of course, be important to ask continually whether our money is being spent productively, to insure that we are getting a satisfactory return on our investment, and not simply changing our problems from one form into another.

C. Specific proposals

Now for a moment let me be more specific about how we might begin to build our new health system.

First, we must build the capacity to train adequate numbers of physicians and other health manpower. Although automation has much to offer, providing health care must continue to be essentially a human process. We must first train those who will work in our new health care system. California has far to go in meeting this objective. Our state is one of the largest importers of health manpower in the nation. Over half of our physicians are trained by other states, and more than 10% of them come from outside the United States entirely. More California doctors retire or die each year than are replaced by graduates of our State's medical schools.

If, as I visualize, California is to become the Health Center of the Nation, we must develop the capacity to train the medical personnel required to meet the needs not just of California but of those from outside the state who will come here to take advantage of our system—and I believe it will be to the economic benefit of our state and its people to have the capacity so to serve the entire nation. I will therefore work to obtain the funds necessary to develop and expand our state's eight medical schools, and to support new programs of training for allied health manpower.

Second, our state's basic biological and medical research program must be adequately supported. Solution of many of our health problems will require a better understanding of the basic mechanisms of health and disease. We will expect our basic researchers in biology and medicine to provide us with the fundamental breakthroughs which allow us to provide better health care. Thus a basic research program is vital; and yet we see that, considering the effects of inflation, during the past two years the nation's yearly investment in basic medical research has declined by 10%. The implications of this decline are horrendous. Skilled clinical research teams, requiring years to train and organize, have been dissolved for lack of funds. Young biological scientists on the threshold of their careers are experiencing difficulty finding employment. Progress in man's fight against death and disease has unquestionably been delayed by reduction in our support of health research.

I will therefore work in close association with our Governor to maintain an adequate and stable level of support at the federal level for basic bioolgical and medical re-

search and to ensure that California's health researchers receive their full share of these funds.

Third, I propose that a series of health systems development laboratories be established throughout California and the Southwest. Collectively, these laboratories will comprise the *Southwest Institutes of Health.* The objective of these laboratories will be to bridge the gap between theory and practice; their role will be to bring progress in basic research to the bedside.

Although our nation has invested more than $20 billion in basic research during the past two decades, it is striking that comparatively little of this money has been spent in applying progress in basic research to actual health care problems. We have all witnessed our society's phenomenal achievements in technologies such as communications, transportation, and data processing. Our health care system has so far employed for general use comparatively little of this progress. Much of the health care system uses the same manual procedures developed 50 years ago, largely unabetted by recent technological progress. What is needed is the kind of think-tanks, imagination, application, and the development labs that have helped bridge the gap between theory and practice in our aerospace industry.

The prototypes are already in existence. A model for such labs has been developed by organizations such as the Rand Corporation, the Aerospace Corporation, TRW, Litton and many others. These organizations have played a crucial role in improving the effectiveness of our known scientific knowledge. Similar organizations can help design and develop a better health care system.

I believe these organizations should be given a charter to examine our existing health care delivery system and to design and test components of a new system. These institutes will be staffed by multidisciplinary teams drawn from medicine, the aerospace industry, the management sciences and architecture. The institutes will provide a stable environment within which these teams can concentrate upon developing our new health care system.

Their charter should be broad—they should examine not only the techniques of diagnosing and treating disease but also the organization, management and financing of the entire health care delivery process, including the building and design of hospitals, dietetic and laundry services, improvements in medical instruments and in the efficient use of personnel. They should overlook no potentially promising means of improving the quality and efficiency of our health care and its delivery to the general public.

Let me give you some examples of ideas that might be developed and tested in these institutes.

Experts tell us that perhaps as much as 30% of the cost of providing medical care is spent on handling paper work. With the advent of Medicaid and Medicare, and as the number of private insurance plans grows, doctors and hospitals have been buried under an avalanche of forms and reports that must be completed for their patients. In addition to the bookkeeping tasks, much additional time is spent maintaining medical records. It has been estimated that nurses spend up to 25% of their time on such tasks.

During the past decade, automated methods for data processing have become standard practice throughout our society. Yet surprisingly little of this technology has been applied in the health field. Automated data processing systems capable of handling both bookkeeping and medical data could be developed and tested.

Let's consider another area, that of financing health care. Could it be that much of the recent inflation in health care costs has been produced by health insurance programs that do not encourage either those who receive care, or those who give it, to keep costs down? If so, this seriously affects many persons who are unable to afford adequate insurance coverage. And it would follow that we need to develop new methods of financing and controlling the cost of health care.

Health economists tell us, however, that designing such programs is still more of an art than a science. We have much to learn before we can design a program that encourages efficiency without compromising quality of care, that distributes our limited supply of health care fairly and is satisfying both to those who receive health care and to those who deliver it. Another area for study and innovation in the institutes I propose would therefore be health economics.

Let's turn now from discussion of financing and management to a more exciting area—using technology to improve the diagnosis and treatment of disease. This country's $20 billion investment in medical research has provided many promising ideas that have not yet been developed and implemented. I will name but a few.

Heart attacks are the leading cause of death in the United States, killing about 500,000 persons every year. During the past decade it has become clear that at least one-third of these deaths are theoretically preventable if appropriate medical treatment can be given in time. After heart attack patients reach the hospital, if they live that long, they receive such care in Coronary Care Units. Most heart attack deaths occur soon after the onset of symptoms, before the patient can reach a hospital. If we can find ways of getting appropriate medical treatment to heart attack patients more rapidly, it may be possible to save tens of thousands of people each year. The technology is available: it remains for us to find ways of getting it to those who need it in time.

Another major cause of death and disability is stroke, a problem that strikes 500,000 each year. More than half of those who survive a stroke are crippled by irreversible paralysis. Because of recent advances in medicine and engineering it now appears possible to identify more than 45% of those persons who are likely to have a stroke before the event occurs. Once identified, surgery can often be used to reduce markedly the risk of stroke. Once again, the technology is within our grasp; we must find ways of applying it.

Cancer is another area in which application of our technology can produce great gains. It is now theoretically possible to develop semi-automated systems quickly and extensively to screen large groups of people for the early warning signs of cancer. Radiation therapy and a variety of powerful new drugs have been used with increasing effect during recent years to reduce the mortality from cancer, but much can still be done in this area. For example, computers can be used to tailor more effective treatment programs for each individual patient, rather than using a more crude "rule of thumb" approach for everyone. In addition, it appears that our basic researchers are rapidly approaching a breakthrough for many kinds of cancer, and it is likely that many radical new approaches to the diagnosis and treatment of cancer will become feasible within the next decade. We must be prepared rapidly to bring the information concerning and application of this progress to those who need it.

Almost any imaginative physician or biomedical engineer can construct a long list of potentially feasible ways for improving the diagnosis and treatment of disease. In part, the reason these have not been developed is that we have lacked the necessary testing and developing facilities. My proposal for a Southwest Institutes of Health is intended to fill this void.

In a slightly difference area, I have for years in the Senate, and particularly in the Health Subcommittee, advocated the need of a federally-financed computerized center of research data on the major dieseases. This would serve a number of purposes, including the elimination of unnecessary duplication of research efforts, the ability of a scientist to find at one place the data on which he can then build, and an obviously increased facility for the application of the results of medical research. If, as I now envision, California becomes the Health Center for the Nation, I would think it logical and appropriate to locate this Center of Medical Research Data in our development here.

Another problem which must be faced is that the health industry is short of the money needed to acquire technological improvements even when they become available. *I therefore proposed creation of a Health Development Bank to provide long-term, low-interest financing for implementation of new health care delivery programs.* The problems of our nation's health care system have often been compared with the general problem of an under-developed nation. The health system needs financing with which to acquire and implement more efficient methods of producing services. Congress recognized the need for such financial support in the Hill-Burton program which has provided for construction of hospital facilities.

A large gap remains, however, because our new health care system will require investments in many items besides buildings. The Health Development Bank will be able to finance such acquisitions. Since the loans will have to be repaid, those who accept them will have to give careful attention to the economic justification for their proposed investments. By providing the health industry the money it needs to improve its operation, it will be possible to obtain help from profit-making firms who presently are unable to obtain a staisfactory financial return from supplying goods and services to the health care system. During the past decade, many profit-making firms have tried to develop products and services for the health care system. Although some progress has been made, it has been slow because the health industry has not had the capital it needed to make large investments in new technology. The Health Development Bank should provide an economic incentive for our state's imaginative and productive business community to help develop tools for our new health care system.

And so I have proposed two new organizations—the Southwest Institutes of Health and the Health Development Bank—which will recognize, coordinate, and compliment other federal and state health development programs already in progress. The Institutes will provide technical expertise and support for the comprehensive health planning and Regional Medical Programs. Their services will also be available to state, county and local governments, as well as to other organizations concerned with health care.

The Health Development Bank can provide a local source of financial support for innovation in health care delivery, and serve as a mechanism for acquiring and disbursing federal funds from a variety of programs. I believe, however, that organizations such as I have proposed will be necessary in addition to existing programs in order to catalyze development of our new health care delivery system in California.

We have the scientific capability now to add at least ten years to the average life expectancy of all Americans and to cut dramatically the time lost and suffering caused our people due to sickness. I believe that by bringing together multi-disciplinary teams from the enormous scientific, technological, and industrial resources in California, we can construct a health care system which will be an even bigger step forward for America than was that first step by man on the moon.

I am sure that each of you can see where you and the institutions you represent can play a role in our realizing this dream.

By 1975 annual medical care expenditures in the United States will exceed 100 billion dollars, making health care the largest single

segment of our economy. I believe that Californians have the talents and resources to show how these vast funds can be utilized as productively and efficiently as possible, and I urge you to join me in seeing that we take the lead in this ever-growing enterprise.

General Ben Schriever, who organized our nation's space program so remarkably well, once told me that the most important single step in that complex undertaking was the original decision of commitment.

I hope very much that from our meeting this morning might come that vital initial step toward solving the nation's health care crisis—the commitment that California shall show the way toward providing adequate, effective, and reasonable health care for our citizens.

It will be good for the American people, it will be good for California, and it will be a most rewarding, gratifying and satisfying experience for all of us who have been part of the effort.

REBELLION IN THE JAILS—THE ALTERNATIVE TO BAIL REFORM AND SPEEDY JUSTICE

Mr. ERVIN. Mr. President, a few days ago, the citizens of New York City and the rest of the country were treated to a tragic lesson of the price that is paid for neglect of the criminal justice system. Inmates of five jails in New York City rebelled, took control of the facilities, and held hostages to their demands. It took 4 days for the authorities to regain control.

This dramatic event has galvanized public and official opinion in New York in a way that all cries of alarm and warnings of disaster by professionals never have. The result has been a new effort in New York to remedy the defects that have grown up over the years in its criminal justice system. I only hope that the time does not dim the resolve that is now being expressed.

I comment on the events in New York City with no intent to criticize. On the contrary, I believe that the problems that face New York are illustrative of those that face many other cities and States, and the Federal criminal justice system as well. New York has these problems, as it has so many others, well in advance of the rest of the country, and probably in a more aggravated form. For this reason, what has happened in New York should be a waring to us all. We should not wait until the criminal justice system comes crashing to a disastrous halt everywhere before we do the things that are required to make it workable and effective.

There are ironic facts about the jail rebellion in New York that should make us pause and be very thoughtful. First, a great proportion of the inmates who rebelled are not hardened convicted criminals. They are, in legal terms at least, free men. They are only charged but not yet convicted of crime. Their only affirmed guilt is their inability to raise the bail that has been set upon them. Many of them have been in jail for months awaiting trial or other proceedings related to their cases. It is an extraordinary fact that in New York City there are a thousand felony defendants released on bail who have not yet been tried, some on charges that go back seven years. How long the jail inmates have been waiting trial is no less amazing and shocking. Over 43 percent of the inmates were detained more than a year, and the average detention period is more than 5 months. Half of those detained are eventually found not guilty or sentenced to time already served.

That New York's criminal court system is overburdened all agree. No one knows the exact dimensions of the problem. It is estimated that there will be a quarter of a million arrests in 1970. The current backlog is estimated at 90,000 to 345,000 cases. Even the lower figure boggles the mind. Equally astounding is the fact that 40 percent of the inmates of the city's jails have not been tried, and a good number more have not even been indicted.

These statistics catalog the breakdown of justice in New York, and they mirror the problems of other cities across the country. One is tempted to observe that in New York defendants are not getting their day in court. Yet the fact is that they get 6 or more days in court before their trial, or a dismissal of the charges. This illustrates that administrative chaos and confusion are the inevitable results of a court system inadequate to the demands placed on it.

One can easily picture the frustration of the police, the victims of crime, the witnesses, and the public when one inconclusive court appearance is followed by another and yet another, as month after month goes by. One can also picture the reaction among the criminal elements and those who may be disposed to crime. The criminal system does not defer, it does not dispense justice. It is little better than a mockery.

The jailed defendant pays the penalty for our failure to establish a judicial system adequate to society's needs. And society pays its penalties, too, in disrespect for law, in breakdown in order, and in riots and rebellion in jail.

Another irony is the aim of this rebellion. What do they ask for? Simple justice. They want reviews of their bail orders. They want speedy trials. And they want decent jail conditions. It is a tragic indictment of all of us that these men riot to demand what we say is their due and the due of society.

There is yet another irony underlying the events in New York. For New York has in fact what we have been led to believe is the solution to many of our criminal justice difficulties—preventive detention. True, in New York there is no formal system of detention such as Congress has now mandated for Washington, D.C. But the operation of the bail system in New York is similar to that in the Federal system before the Bail Reform Act was adopted. New York has a money system of bail which results in practice in the indefinite detention before trial of the poor and the supposedly dangerous, in overcrowded and crime-ridden jails, in delayed trials and rampant injustice and in human tragedy.

An article in the New York Times for Tuesday, October 6, quotes some of the recommendations of the State Senate Committee on Crime and Correction. I quote from the news report:

> A section, "Reforming the Criminal Justice System," urged a change in the bail system noting that "when a judge imposes bail on a defendant who is obviously indigent, he is, in effect, mandating that the defendant will remain in a cell until he is brought to trial."

This is what the Bail Reform Act was designed to eliminate. Regrettably, Congress repudiated that reform with the adoption of preventive detention. But in New York we see exactly what benefits to justice preventive detention brings.

One consequence of the jail rebellion in New York was a review of bail orders, part of which took place in the jails themselves. Another result has been a call for a wider application of bail reform along the lines of the Vera Foundation recommendations and the Federal model. And third, there has been a serious proposal for a 60-day trial requirement. To quote the State Senate Committee report again:

> Public confidence in the criminal justice system will never be restored until we guarantee the right to a speedy trial.

This call has been echoed by Mayor Lindsay in his analysis of the crisis—

> Above all else, we must fulfill the constitutional mandate of a speedy trial. A defendant should be held only for a set time before trial, after which he will have to be released on recognizance, unless the delay was due to the defendant or his attorney. A 60-day limit on detention would reduce the current detention population by 46 per cent. A 90-day limit would mean a 32 per cent reduction.

The lessons for Washington, D.C., and the States and the federal system are plain. Preventive detention is not the answer. What is required is efficient, humane, speedy, and firm justice. Bail reform is one requirement. Close supervision, assistance, and control of defendants awaiting trial is another. Speedy trial is essential.

It is not yet too late for Congress to take steps now which will prevent the kind of breakdown of criminal justice which has occurred in New York. There is now pending in the Judiciary Committee legislation I have sponsored which would require criminal trials within 60 days, and which would expand Federal bail agencies to supervise released defendants. This proposal, S. 3936, has broad copsonsorship. The first replies from a survey of lawyers, bar associations, and judges undertaken by the Constitutional Rights Subcommittee disclose general approval of its main outlines and many valuable suggestions for improvements. I hope that early next year we can work on it making it law.

I should state that to achieve speedy trials we need no more research, no more study, no more commissions, no more assessing of blame by the courts, the police, the prosecutors, the defense counsel, and the legislature. We all know that what is needed to make criminal justice workable is more—more judges, more courtrooms, more personnel, more facilities, more supervision, more rehabilitation, more money. What is lacking is will. The will to provide what is necessary.

To achieve this goal we must stop using crime as a political football. We need a cease-fire on charges and countercharges of who is "soft on crime." We need a moratorium on crime proposals which put a premium on political salability and a discount on constitutional

liberties, but which have little or no impact on the real problems of law enforcement. A true desire to achieve law and order requires cooperation and mutual dedication to a common goal. Breast beating on the political stumps may win elections but it does nothing to stop crime.

Because the events in New York are so important for the federal system and for other States and cities facing the same problems, I ask unanimous consent to insert in the RECORD a number of news reports and editorials which explain the causes of this rebellion, and the steps that are needed to remedy the problems facing New York and the rest of the country.

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

[From the New York Times, Oct. 6, 1970]

THE ROUTE TO JAIL REFORM

Now that a measure of surface calm has returned to the city's riot-torn prisons, neither the city nor state can afford to wait for the next inevitable explosion before undertaking drastic reform of the entire system of criminal justice.

An admirable starting point for that kind of reform is provided in the call by the State Senate Committee on Crime and Correction for legislation setting a sixty-day limit on the time between arrest and trial. It is scandalous, as we have repeatedly noted, that court delays and bail inequities condemn men who have never been found guilty of anything to languish in jail for six months or more before they stand trial.

Chief Justice Warren Burger set forth in his State of the Judiciary message his belief that a sharp cut in crime would result from judicial action to dispose of all cases within sixty days. California's penal code puts a sixty-day limit on the time between arrest and trial in the absence of "good cause" for delay. The Illinois code mandates trial within 120 days after arrest unless the defendant himself causes delay.

An interminable list of statements by high public officials over the years acknowledging the gross flaws in the penal system here makes it plain that no action toward basic change will ever come without compulsion of law. Chief Justice Burger himself admits that judicial processes have remained essentially static for 200 years.

Only under the spur of a legislative mandate will there be the necessary coordination of effort and allocation of funds to take the glue out of the flow of justice. "Arresting more and more people will do little good if they are then consigned to a dismally debasing correctional system," is the apt warning of the State Senate committee on the basis of its inquiry into last August's upheavals at the Tombs—a rebellion now repeated on a much graver scale.

Mayor Lindsay showed great personal courage in his visit to the Tombs Sunday night after the prisoners there had complied with his demand that they first release the guards being held as hostages. So did the State Supreme Court justices who went into the Queens House of Detention to hold emergency bail review hearings.

But the time is past for expedients under duress; the need is for reform of the most fundamental character in every element of the system. It is obvious that even the most dedicated of administrative judges lack the managerial expertise required to reorganize the flow of cases in the criminal courts. This is a matter that goes beyond more judges and more courtrooms into the establishment of a computerized system for maximum efficiency in the disposition of cases. All-purpose courts of the type successfully tested in Queens can work best if linked to a professional system of court administration.

Bail reform and bail review are clearly needed. The present ghastly overcrowding in municipal prisons would be tragically worse if the city had not adopted the recommendation of the Vera Institute of Criminal Justice for summonses in lieu of arrest for persons accused of many misdemeanors. But much more can still be done to keep out of jails people who do not belong there or who would not be there if they were not too poor or rootless to raise bail.

Once such problems have been solved, the opportunity will exist to tackle the equally fundamental one of how to keep city and state prisons from functioning as schools of crime and degeneracy instead of places for rehabilitation and the revival of hope.

[From the New York Times, Oct. 6, 1970]

JAIL SURVEY ASKS LESS TRIAL DELAY

(By Martin Gansberg)

The State Senate Committee on Crime and Correction said yesterday that it would seek legislation mandating trials within 60 days of arrest as a means of avoiding overcrowding in prisons.

In a 55-page report on disturbances at the Tombs in August, the committee asserted that "overcrowding, with the inescapable side effects," was the principal cause of the riots. According to a Department of Correction study, 46.1 per cent of those awaiting trial in New York prisons had been held for three months or more.

Announcing the committee's findings at a news conference in the State Office Building, 27 Broadway, Senator John R. Dunne, Nassau Republican, who is chairman of the committee, offered the following recommendations:

That Mayor Lindsay declare his intention to use the Women's House of Detention as a male detention facility when it closes in December.

That the city phase out Rikers Island Reformatory and use the facility for prisoners awaiting trial.

That the Board of Correction, a citizens' group, be reorganized to include greater powers and minority group representation.

That legislation be enacted giving the state complete responsibility for prisoners; thousands of prisoners now in 12 institutions here are under city control.

That adjournments by judges be granted only, as extraordinary relief to prevent delays.

That the state take complete responsibility for the operation of all courts.

LATEST DISTURBANCES EXCLUDED

"Our report does not contain any specific reference to the latest disturbances," Senator Dunne said. "But that should not matter, because the same deplorable conditions which caused the Tombs riots gave rise to the recent turmoil."

Emphasizing that the committee did not intend "to place blame," but rather to offer "specific resolutions," the Senator did show some annoyance at the slowness of city officials to resolve the problem.

"We heard Mayor Lindsay say last night that he is aware of the problems in city detention facilities and that he is prepared to deal positively with them," Mr. Dunn said. "He has said that many times before. He said it to me in a meeting at City Hall last December. He said it after the Tombs disturbances in August."

The Senator made the comment in introductory remarks with two members of his committee, Senators Waldaba Stewart, Brooklyn Democrat, and Anthony B. Gioffre, Westchester Republican, at his side.

The recommendations in the report, Senator Dunne said, "are not limited to the Mayor." He said the Legislature was urged to act on the right to a speedy trial and the State Bar Association was asked to direct lawyers to avoid routine adjournments.

In the report, the committee charged that Commissioner George F. McGrath "showed no initiative in seeking new facilities" and that he "appears to have a lack of knowledge about his own institutions."

PERSONNEL SHIFTS SCORED

The committee also deplored the "constant reshuffling and turnover of key middle management personnel, mainly among wardens" and the fact that "key positions in the department have been left vacant."

In a special section, "Humanizing the Institution," the committee said that the basic complaint of those taken to city prisons was that they were "in a state of complete confusion." "Some cannot read," the report said. "Many do not speak English. All are herded into small cells without being told how they may contact relatives on the outside."

To overcome this, the committee urged that prisoners have access to telephones and that multilingual personnel be available. It also recommended improvements in sanitary conditions and preparation of food. Better medical treatment and extra recreational facilities also were suggested.

A section, "Reforming the Criminal Justice System," urged a change in the bail system, noting that "when a judge imposes bail on a defendant who is obviously indigent, he is, in effect, mandating that the defendant will remain in a cell until he is brought to trial."

The committee recommended, to avoid holding men in prison too long, that Probation Department personnel be increased to speed release on recognizance procedures and that courts review arrests to determine if men were being unnecessarily held.

"Public confidence in the criminal justice system will never be restored until we guarantee the right to a speedy trial," the report said.

On the subject of adjournments, the committee declared that this "is one of the best weapons" defense lawyers have because "over a period of time witnesses lose their fervor and even their memories."

The committee urged that judges stop granting adjournments "almost automatically" and recommended that "inadequate time to prepare should no longer be grounds for adjournment." It also said that once a trial date is agreed upon, a lawyer "should consider himself under strong obligation to be prepared for his case."

The discussion of courtroom procedure led Senator Stewart to shout angrily, "Let's put our finger on the cancer. The cancer is racism in the courts of New York."

He said minority groups were poor and the poor could not get quick court action or strong legal representation.

[From the New York Times, Oct. 6, 1970]

BAIL CASES HEARD IN SUPREME COURT

(By Robert E. Tomasson)

Six weeks ago the State Supreme Court's chief administrative judge for Manhattan and the Bronx warned sharply "of an impending crisis in the administration of justice" because of a huge backlog of criminal cases.

Yesterday—after four days of sporadic insurrection in five city jails, where a chief complaint by inmate rioters was the delay in bringing their cases to trial—one of several suggestions made in a report by State Supreme Court Justice Saul S. Streit was put into effect on a limited basis. Its aim is to expedite the cases of defendants who are out on bail.

The report also dealt with the lengthy time that many inmates spend in jail awaiting trial.

There are now 978 felony defendants out on bail in Manhattan on charges in some cases dating back seven years, and reducing

the number is considered by senior judges here to be a first step toward providing the accused with a "speedy" trial, as mandated by the Constitution.

BAIL CASES SPEEDED

Jutice Streit had recommended that these bail cases either be called for immediate trial or that the charges be dropped. Yesterday State Supreme Court Justice Nathaniel T. Helman began hearing some bail cases in the State Supreme Court Building at 60 Centre Street, which is traditionally devoted to civil cases.

His assignment by Justice Streit is expected to begin to relieve the crowded facilities in the Criminal Courts Building a half block away and also ease the bail-hearing load of other judges, who could presumably speed other criminal proceedings.

Another recommendation by Justice Streit, to reduce the criminal calendar by transferring 15 state judges who normally sit in civil parts to criminal matters, has not been followed by the judge's superior, Harold A. Stevens, the Presiding Justice of the Appellate Division.

However, Justice Streit has reassigned some judges who have been sitting in civil parts to hear criminal cases, where they have more experience. For example, Justice Mitchell D. Schweitzer was recently transferred from property condemnation proceedings to hearing felony cases.

Justice Bernard Nadel has been reassigned from criminal to civil cases, while Justice Harold Birns, a former assistant district attorney, has been transferred from civil cases to criminal hearings in the Bronx.

OBSTACLES TO REASSIGNING

Justice Stevens said yesterday that "it was not all that simple to simply reassign judges" from the civil to the criminal parts in an attempt to reduce the backlog.

The major roadblock to this approach, according to both Justices Stevens and Streit, are the security and personnel arrangements required to staff a courtroom.

Justice Stevens said yesterday that soon after Justice Streit's report was made public, including an accusation that the city was dragging its feet on completing courtroom facilities in the Criminal Courts Building, work increased on courtrooms on the 15th and 16th floors, and the latter are now expected to be completed Jan. 1.

Justice Stevens, who has authority over State Supreme Court and the Civil, Family and Criminal Courts in Manhattan and the Bronx, noted that although he was a state official, he was dependent on the city for budgetary allocations for equipping and staffing the courts.

Security arrangements are of prime consideration in using often underutilized courtroom facilities here for criminal cases. Private entrances and elevators are often required for accused felons, as are lockup pens and a generally secure building—facilities that do not exist outside the criminal courts building in the city.

Justice Stevens said yesterday that at his immediate request for additional facilities, Bronx District Attorney Burton B. Roberts had said he could staff two additional criminal parts, while Manhattan District Attorney Frank S. Hogan said he could accommodate one additional part.

[From the New York Times, Oct. 6, 1970]

THE QUEST FOR JUSTICE: PRISONERS AND OFFICIALS AGREE CHANGE IN SYSTEM IS NEEDED; SOLUTION ELUSIVE

(By Lesley Oelsner)

There is little disagreement among the men who fill the cellblocks of the city's jails—almost to a man they want speedy trials, lower bail and better jail conditions. There is little disagreement among the men outside the cellblocks, either—the politicians and the judges and the correction officers. "They've got good gripes," a guard said on Sunday, after three days as a hostage in the Tombs. "Most of what they say," Correction Commissioner George F. McGrath said, "I have said many times over the past months."

But it is a measure of the problem that though everyone agrees on the defects in the system of criminal justice and nearly everyone has his own answer to erasing those defects, almost none of their answers coincide.

From Mayor Lindsay comes the remark that "Only prompt, decisive action by the state court system can begin to bring real relief." From Assembly Speaker Perry B. Duryea Jr. comes the rejoinder, "Isn't that what he [Mr. Lindsay] says about everything?"

"NOTHING" DONE

Mr. Duryea says that future legislative action on the jail and court problem will depend in part upon the recommendations of a bipartisan commission that was created by the Legislature last spring to study the state's courts.

But one commission member, Judge Nathan R. Sobel of the Kings County Surrogate's Court, says, "This committee has done absolutely nothing, even as to holding its first meeting or appointing a chairman." The commission is to submit its report by February, "which," says Judge Sobel, "they're not going to do, of course. They can't."

Then there is Manhattan's District Attorney, Frank S. Hogan, who blames lawyers who make innumerable pretrial motions on behalf of their clients for court delays. Except in homicide cases, where the oldest case is given top priority, he says, "If there's any person presently detained who wants a speedy trial, I'd give it to him."

DUDLEY DISAGEES

There are the minority leaders of the State Assembly and Senate, Stanley Steingut and Joseph Zaretzki respectively, who assert that if they, the Democrats, were in power, the state would reassert its responsibility for the court system.

And there is Edward R. Dudley, who is to retire soon as Administrative Judge of the New York City Criminal Court, who says that the problem isn't court reform at all.

The problem, according to Judge Dudley, is simply one of facilities—too few jails, too few courtrooms.

But if there are a lot of accusations and solutions—and, in the words of State Senator John R. Dunee, chairman of the State Senate Committee on Crime and Corrections, "a whole lot of buck-passing," there is also some reason for the confusion. For in the opinion of most experts on criminal law and court added together, have brought the courts of administration, it is a variety of factors that, New York and other cities to a near halt.

OTHER CAUSES LISTED

Thus the plethora of pretrial hearings made possible by the decisions of the Warren Court—and mandated by certain later legislation—have greatly lengthened the amount of time that an individual case can take.

At the same time, as even the City Criminal Court's Administrator, Lester Goodchild, concedes, the lack of "modern management" concepts in calendar control and data processing has bogged down the system still further.

Then there is a lack of personnel. There are not enough correction officers to get the prisoners to court on time; there are not enough probation officers to advise judges on whether defendants should be parceled or held on high bail. And with judges holding court in their robing rooms, and prisoners sleeping two or three to a one-man cell, there and clearly not enough jails and courthouses.

WOULD SWITCH OBLIGATION

Each of these solutions carries an obvious remedy: hiring administrators and other staff; building new facilities; requiring defense lawyers to make all their pretrial motions in a single omnibus proceeding. The problem in implementing the solutions, though, experts say, has been two-fold: finding the will and the money to do it.

Senator Dunne's proposal yesterday—that trials be required within a certain time limit, a requirement that has been working in California—would eliminate the "will" problem by removing the element of choice.

The Senator would transfer the financial obligation from the city to the state—a transfer that both the Mayor and the two Democratic legislative leaders have been requesting for some time.

Will the Republic-dominated Legislature go along with the plan? "I think," says Senator Dunne, "that it'll become a reality" because now, he adds, the Governor agrees.

[From the New York Times, Oct. 11, 1970]

EXCERPTS FROM THE MAYOR'S STATEMENT CALLING FOR COURT REFORMS HERE

Following are excerpts from Mayor Lindsay's statement on court reform made to the administrative board of the Judicial Conference:

Today, I come before you with recommendations for improvement. But six major changes—in attitude and in policy—deserve the highest priority.

EMERGENCY SESSIONS

First, the courts should go into emergency session on nights and weekends until the backlog is cleared. Judges should also hold regular bail-review hearings in houses of detention. In a time of crisis, business as usual is not acceptable. Only emergency action will demonstrate to inmates, correction officers, police and the public a visible commitment to justice.

This will cost money—something New York City doesn't have. The state, which is legally responsible for the courts, should provide emergency funds now. If the state fails to meet its responsibility in the face of crisis in the state courts, the city will pay, no matter what sacrifice we must make to find the necessary resources.

We are already paying more than our due. We have doubled our expenditures for the courts in the last four years. At the same time, the state spends nothing for the operating costs of the State Supreme Court except to pay a portion of the judges' salaries.

AID FOR INMATE ADDICTS

Second, the state narcotics program should fulfill its pledge to treat the thousands of criminal addicts now in city jails. Almost 60 percent of our inmates are suspected narcotics addicts who by law should be in state treatment facilities. If they were, the jails would no longer be overcrowded.

The failure of the state narcotics program has crippled the entire criminal justice system. Ironically, many suspected addicts charged with a crime suddenly plead guilty when threatened with the alternative of commitment to state treatment. They know that the state's narcotics "treatment" program is largely a euphemism for prolonged imprisonment.

Even worse, 244 persons already committed to state treatment are illegally confined in the city's prisons because there is no room in the state's facilities. The state must take immediate action to make its narcotics program work. If it had worked during the last three years, this crisis would not exist.

BAIL POLICIES ASSAILED

Third, bail policies should be drastically overhauled. Only 10 percent of defendants currently remanded to jail are offered the authorized option to secure bail by depositing a small cash alternative, nine-tenths of which is returned to the defendant when he appears in court. Only 20 percent of those remanded ever receive bail reduction, al-

though almost half of the prisoners who do, make bail within 24 hours.

But beyond cash alternative and bail reduction, the most important reform of all would be a time limit on detention.

Above all else, we must fulfill the constitutional mandate of a speedy trial. A defendant should be held only for a set time before trial, after which he would have to be released on recognizance, unless the delay was due to the defendant or his attorney. A 60-day limit on detention would reduce the current detention population by 46 percent. A 90-day limit would mean a 32 percent reduction.

BOARD ACTION URGED

Fourth, this Administrative Board should take direct responsibility for the daily operation and efficiency of the judicial system. The courts require detailed supervision, unfailing discipline and a continuous monitoring of judicial practices. Only the board, with its broad power to run the courts, can stop the flagrant abuse of adjournments by court officials and the private bar.

We cannot expect judges to be administrators or ask them to serve as clerks. Backed by strong leadership of the Administrative Board, competent lay administrators should be given full authority to manage the courts. Computers and staff should do the daily nuts-and-bolts work. We lose the dignity of the law when judges sit as clerks and cases sit unheard.

This board could also establish a State Judicial Center, similar to the Federal Judicial Center, to provide innovative planning and research for the entire court system.

ELIMINATION OF CITY COURT

Fifth, the New York City Criminal Court should be abolished and its functions merged into the single, unified state court system established by the State Constitution. State courts, functioning under central state direction, and funded from the state budget, should dispose of all criminal cases. A divided court system inevitably leads to serious procedural and management defects.

REDUCTION OF JURISDICTION

Sixth, we must limit the criminal courts to serious crimes and find other ways to regulate moral conduct and deal with lesser offenses. The State Legislature must remove administrative violations, such as housing offenses, which clog the criminal process. And government must arbitrate the competing moral demands of a diverse society in new ways.

Criminal sanctions do not deter gambling, prostitution and other victimless "crimes." These "crimes" overload the courts, breed corruption, encourage disrespect for law, and waste scarce resources.

A recent study showed that the City of New York in one month spent at least 40 times as much enforcing gambling statutes in Manhattan as it received in fines from convicted violators. The conviction rate was less than 30 per cent and no one was sentenced to jail. A month of fruitless anti-gambling action in one borough cost the city $230,000.

Strict regulation must replace our present futile reliance upon the criminal justice system in such areas.

With those six priorities in mind, I would now like to focus on the need and the specifics for a comprehensive program to deal with court delay and relieve the detention crisis in New York City.

THE CRISIS DEFINED

Initially we must understand the scope of the problem:

Of the 1968 arrest population, 43 per cent of the prisoners held in detention through trial were held for over one year. Half of those detained through trial were found not guilty or sentenced after conviction to time already served:

Of the 1968 arrest population, only 2.6 per cent finally received sentences of more than a year. Sixty-four per cent of those in detention spent no time in jail after adjudication.

Of the 1968 arrest population, almost half had six or more court appearances on their charge. Fifty-five per cent of all arrests resulted in dismissals or verdicts of not guilty.

Of the city's detention population, about half are awaiting action in the Criminal Court, while the rest are awaiting action in the State Supreme Court.

The average length of time in detention for Supreme Court cases in New York County is 5.14 month, with a 1.77 month average detention time for Criminal Court cases.

The city's adult-detention institutions are at 183 per cent of capacity.

LONG DETENTION "TRAGIC"

These statistics pinpoint our delay problems. And they reveal that too many defendants are subjected to the tragedy of lengthy detention before guilt or innocence has been decided.

We all share the blame—court administration, state government, and city government. There are extenuating circumtances. The sharp rise in arrests since 1964 has imposed an extremely heavy burden upon all of us. For example, in the last six years, misdemeanor arrests jumped 77.5 per cent in New York City and adult felony arrests rose by 50 per cent. We expect 250,000 arrests this year.

The city has responded with new resources and the drain upon the city treasury has been substantial.

In 1969, 34 new judges were added to the State Supreme Court in the First and Second Departments. Twenty judges were added in 1969 to the Criminal Court and five more will join the court after traffic adjudication is phased out at the end of the year.

Since 1967, the Office of Probation budget has tripled; the Legal Aid Society budget has quadrupled; and city budget appropriations for district attorneys, the Criminal Court, and the State Supreme court have each doubled. The city provided these additional resources in only four years.

CITY'S ACTIONS LISTED

Moreover, the city has spent $90-million in the past five years for new facilities for the Department of Correction. In three years the city has more than doubled the corrections budget. And just in the past two months of crisis, the city has authorized the hiring of 300 new correction officers and 53 additional Criminal Court personnel for the new jury trial parts.

New York City spends almost 15 per cent of the total criminal justice funds expended by all state and local governments in the entire nation. That's a heavy load for a city with just 4 per cent of the national population.

It is also discouraging. For it is clear that these budget increases have not been matched by sufficient reform or modernization within the court system.

Additional money can be used to advantage. But the persistence of court delay indicates that the principal fault lies with basic short-comings in the way the court system uses existing time and resources.

FUND REQUEST CRITICIZED

The courts ask us for more judges, more clerks and more space But we who have to draw funds from an exhausted public treasury find it difficult to react favorably, when the request for funds comes with no plan for basic change, no indication of a commitment to longer working hours, no penetrating analysis of court data, no indication that supervision and discipline of judges will be priority issues, and no sign that the central administrative control authorized by statute and rule will be exercised to the utmost.

Why build expensive new court facilities when the public sees existing courtrooms in session only a few hours each day.

In February, 1969, the Administrative Judge of the City's Criminal Court stated that judges' work schedules were lax. He criticized their failure to put in full work days. He said the courts were improperly run.

Before the city takes money away from schools, from police, from housing and from other essential services, before the city raises taxes in order to help the courts, we must know that such criticism is no longer valid.

EXAMPLES OF CRISIS

Examples of the management crisis are legion. Let me cite just a few.

No one can tell us the nature and numbers of the Criminal Court case backlog. Costly analyses have produced only frustration with the incredible state of court records. Intelligent researchers have derived from the same data backlog figures ranging from 90,000 to 345,000 cases. How can anyone plan without such basic information?

Long calendar calls by judges produce adjournment rates in Criminal Court of between 40 and 50 per cent. This situation goes on and on and on. Some defense attorneys procure adjournments as a lever to collect their fees. Do countless, unproductive calendar calls represent good management, good planning, or good use of judicial time?

In summer months, calendar listings are scandalously low in number. Even in the courtrooms that are open, activity is often limited to two or three hours. How should we characterize a system of supervision and discipline that permits this to continue while detained prisoners lie crowded in the scorching heat of a prison?

In State Supreme Court, a prisoner may wait five to six weeks before a grand jury indictment is returned. Why?

In State Supreme Court, many convicted prisoners must wait 60 or more days for sentencing. Why?

As of June, 1970, of State Supreme Court defendants in detention, only 43 per cent were awaiting trial. Fifty-seven percent were awaiting indictment, or sentence after conviction. Why?

These facts are inescapable. They cry out for change.

If drastic reforms are not forthcoming, I am prepared to request a delegation of management authority for courts within the city from the state's judiciary to the city's executive branch.

New York City is paying most of the judicial bill. The courts must be publicly accountable to the ctiy's taxpayers. Citizens have as much right to expect performance from the courts as they do from police, hospitals and sanitation.

POLITICAL ACTIVITIES OF COLLEGES AND UNIVERSITIES

Mr. ALLOTT. Mr. President, last Wednesday American Enterprise Institute published a most timely and useful study of a complex issue.

The title of this study is "Political Activities of Colleges and Universities: Some Policy and Legal Implications." The authors are three distinguished lawyers, Robert H. Bork of the Yale Law School, Howard G. Krane, attorney at law in Chicago, and George D. Webster, attorney at law in Washington.

In recent years American colleges and universities have been drawn into the vortex of the political turmoil. Political activities undertaken on campuses, and with varying forms of cooperation and sanctions from the faculty and administrators and trustees of colleges and universities, have raised many vexing questions.

These questions concern the traditional independence of such institutions, and the tradition of academic freedom. These questions have been explored with proper thoroughness throughout the Nation.

But there is another question, more technical in nature, which has not been given the extensive public exploration it deserves. This concerns the effect which different kinds of political activities can have on the legal standing of institutions of higher education.

The report reaches one conclusion that is especially pertinent right now. It is that colleges and universities that engage in political activities—such as recesses to permit students and faculty to participate in campaigns—expose themselves to serious legal penalties. Of course, the matter of tax-exempt status for these institutions is a central problem.

The purpose of this study is "to analyze the law—to assist the public in understanding it and university personnel in complying with it." I think this study does a fine job. It deals precisely with technical questions. In addition, it brings calm philosophy—rather than enflamed ideology—to bear on the broader issues involved.

This distinction between philosophy and ideology is important in the work of AEI. This organization does not take stands on issues. Its work is grounded in a faith in the free market in information. AEI considers its job done when it has armed public officials with the relevant considerations as they are advanced by persons on various sides of the issues.

The conclusions reached in this analysis are the conclusions of the authors. AEI takes no position on these conclusions.

So that all Senators may profit from this illuminating study, I ask unanimous consent that the first two sections of the study "Perspective" and "Effect of Political Activities on the University's Tax Exemption" be printed in the RECORD at the conclusion of my remarks.

Mr. President, this city is fortunate to have a number of organizations which provide public officials with high-level policy studies. The work done by institutions such as AEI and the Brookings Institution is varied in form, but invariably is of high quality.

For example, AEI publishes policy studies of the sort I am placing in the RECORD today. It also publishes a press summary which I know my office finds very useful. In addition, AEI schedules rational debates which are exactly what the name says they are. They bring together informed men and women to discuss matters of real urgency, and these debates are published in book form.

Last week I was able to share with the Senate a very thoughtful essay prepared by a fellow of the Brookings Institution. Today I am delighted to bring to the attention of the Senate the latest in a continuing series of distinguished publications from AEI.

Mr. President, I think AEI and her sister institutions are to be congratulated for their various contributions to public understanding.

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

PERSPECTIVE

American universities are alive with political activity. Though this activity will reach its peak in the November congressional elections, the phenomenon is not new. Within the past few years this country, along with many others, has experienced an unprecedented upsurge of political activism on its campuses. A major aspect of this development is the increasing demand that universities and colleges commit themselves to political action in a variety of ways and in a variety of causes. If such demands are acceded to, universities may make themselves liable to serious legal penalties.

THE STATUTES

Section 501 (c) (3) of the Internal Revenue Code provides that an exempt organization, including an educational institution, shall lose its exemption from federal income taxes if any "substantial part" of its activities constitute "carrying on propaganda, or otherwise attempting, to influence legislation," or if it should "participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office."[1] A parallel provision, Section 170(c), denies a deduction from income taxes for donors to institutions that violate these proscriptions.[2] Moreover, Section 610 of the Criminal Code makes it a criminal offense "for any corporation whatever . . . to make a contribution or expenditure in connection with any (federal) election . . ."[3] Sanctions may be visited upon both the corporation and its responsible officers. Enforcement authorities consider Section 610 violated by indirect contributions, as, for example, the payment by a corporation of an employee's salary during a period which he devotes to work on behalf of a candidate for federal office.[4]

PURPOSES OF THE STUDY

Our primary purpose is to analyze the law—to assist the public in understanding it and university personnel in complying with it. In some important respects, the law seems fairly clear, but in other areas the law is still developing and our guidance takes the form of pointing out possible dangers. Uncertainty about the future shape of the law is increased by the pressure upon the statutes' basic concepts of major policy issues that have yet to be resolved. We have tried to articulate these issues that must be faced in applying the laws under examination here as well as in the framing of any future legislation dealing with these topics.

Our interest in the subject, however, goes far beyond providing guidelines. These laws possess a larger significance because of their bearing upon the phenomenon of the politicization of the universities. Few people would be interested in the narrow subject of the tax law relating to educational institutions, but when that tax law deals with an aspect of dramatic and troublesome social trend it may legitimately claim the attention of a wider audience. We cannot hope in a study of this length, of course, to explore the full range of social and political implications of this topic, but we hope to stimulate thought about academic politicization, the dangers it presents, and the law's proper relation to the problem. It is important, indeed it seems to us crucial, that assumptions about fundamentals—the role of universities in our society and the function of legal norms and sanctions in defining that role—be made explicit and examined in the process of applying the existing statutes and in shaping new laws. Much that is ambiguous in the statutes under discussion here arises from the lack of such fundamental discussion at the time of their passage.

NATURE OF THE PROBLEM

These are sensitive and potentially inflammatory topics. Some persons will perceive the application of law to university political behavior as an attempt to stifle dissent, an assault upon academic freedom. Others will see it as an essential means of recalling universities to their proper educational focus. The opportunities for heated rhetoric and hasty reaction on each side will be many. There is no need here to anticipate or to take sides on all of the issues that may arise. The problem is too complex for that and our society is merely beginning to explore its manifold difficulties. But we do speak from a general position that should be made clear. Universities have been centers for free and disinterested inquiry, the systematic accumulation of knowledge, and the transmission of both that knowledge and that spirit of inquiry to rising generations. We begin from the premise, widely but by no means universally shared, that these traditional and specialized functions are extremely valuable and worth preserving. But universities may be damaged, perhaps irreparably, either by the unsophisticated application of legal controls or by the continued growth of an uninhibited political activism on campuses. Alarm at developments within our universities must not trigger unreflective responses, but there is equally no occasion for a complete hands off policy. Law can play an important part in preserving academic values but those values certainly cannot be sustained entirely by law.

The relationship of the present study to the general problem may be clarified by some perspective. Politicization is a diffuse and complex phenomenon. It poses problems for and about universities that could hardly have been foreseen even a few years ago and were certainly not anticipated when Section 501 (c)(3) of the Internal Revenue Code and Section 610 of the Criminal Code were enacted many years ago. These statutes are aimed at actions attributable to the policy of an institution, and such actions are by no means at the root of our current troubles.

EFFECTS OF POLITICIZATION

The general public has been made aware of politicization in the universities by the spectacular outbreaks of violence that have accompanied the process. These are familiar items of television and press coverage: bombings, arson, building seizures, record destruction, imprisonment of administrators in their offices, classroom disruptions, equipment destruction, and violent encounters between students and police or national guardsmen. Scores of universities have known such episodes, some repeatedly, and a few campuses approach a state of incessant guerrilla warfare. Lesser incidents of the same nature plus such behavior as window smashing, abusive and obscene language, threats of violence, disruptive picketing, and the like, have become so commonplace that they frequently go unreported.

Yet this bare catalogue of physical violence, horrifying though it may be, does not begin to suggest the depth and intensity of university politicization or the more profound changes that are occurring—changes in mood and atmosphere that may prove

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[1] 26 U.S.C. § 501(c)(3). For a complete text of this section see Appendix A; a more complete discussion of this section begins at p. 8.

[2] 26 U.S.C. § 170(c). For a complete text of this section see Appendix A.

[3] 18 U.S.C. § 610. For a complete text of this section see Appendix A; a more complete discussion of this begins at p. 26.

[4] See Indictment, July 31, 1970, against First Western State Bank, Minot, North Dakota, quoted in part *infra* and noted at p. 60 in Appendix F. See also Department of Justice Memorandum, January 26, 1962 (on file in New York University Law Review Library).

even more ominous in the long run. Prolonged physical threat must inevitably change for the worse the performance of institutions not geared to violence, whose structure, rules, and habits indeed assume that force is not merely improper but unthinkable. Physical threat alone might not have produced the decline of morale, the loss of elan, the attrition of the spirit, that is so patently occurring within many universities. This is more probably the result of moral pressure and uncertainty, for the crisis in the universities is precipitated not by the traditional enemies of free inquiry but by members of the academic community itself. Students and faculty members are not merely using the university as a convenient forum to protest national policies or to launch ventures into the politics of the larger community but are actively, and even violently, challenging the legitimacy of traditional academic functions and standards. Sharp challenges from within the community, stated in uncompromising moral and intellectual terms, are bound to be more unsettling and divisive than would challenges from without. Accustomed to misunderstanding and even to hostility from without, the academic commmunity believed that its values were universally held within. The discovery that they are not has shocked and dismayed the academic world.

In a politicized university, moreover, challenge and its attendant turmoil are unceasing and therefore enervating. Again the community outside the universities is aware of issues that result in dramatic violence or that involve many universities at once, such as the protests and strikes that swept hundreds of campuses in response to the United States's Cambodian invasion. But, increasingly, many other once routine actions and procedures have come to be regarded as political and hence the proper subjects for demands, boycotts, strikes, and the application of other forms of pressure. Among the topics now so regarded on many campuses are changes in the content of curriculum, faculty recruitment, the grant or denial of tenure to faculty, admissions policy, disciplinary actions, performance of government research, racial composition of the faculty or student body, erection of new buildings, wage scales of maintenance workers, performance of service functions for the local community, and student participation in various aspects of university governance.

This state of affairs imposes heavy costs upon universities. Intellectual work demands, for most people, a degree of serenity and freedom from distraction and tension. It is most fruitful when the academic discussion is civil and open. These conditions are destroyed when the university lives in chronic tension, anger, and distrust. Politicization means division among faculty members, between faculty and administration, between faculty and students, and among students. Not only is communication impaired among faculty members, and hence an important stimulus to intellectual achievement lost, but teaching, which requires a degree of sympathy and shared values between the teacher and the students, becomes less effective.

THE ACADEMIC CONSENSUS ON NATIONAL ISSUES

Finally, though we have stressed divisions and tensions within the universities, politicization has, curiously, produced an opposite danger, that of conformity. Within universities there may be strife about internal policies but, increasingly, universities face the outside world and its political issues with a unified outlook. Within many universities there is, for example, remarkably little debate on such subjects as Vietnam, and on many such campuses no speaker wishing to defend present national policy on that subject can even obtain a hearing. Less dramatic but still notable is the academic consensus about other national issues. Academicians do not display the spectrum of opinion that the larger society displays. There are very few representatives of conservative or even middle-of-the road political opinion, a situation that is surely a matter for concern in departments—such as economics, political science, sociology, and law—that treat controversial issues as subjects for scholarship.

Despite this relative uniformity of opinion, university administrators and faculties have generally resisted the suggestion that they participate as institutions in political affairs. Most academicians share the general American feeling that universities have no place in politics. Yet when pressure became intense enough many universities came dangerously close to violating that principle. Pressure for university political action is particularly difficult to resist when opinion about the issue at stake is virtually unanimous on the campus. Intensity and unanimity of opinion combined last May when United States military actions began in Cambodia and the result was a number of forms of university political involvement that at least raised the legal issues of tax exemption discussed here.

UNIVERSITY INVOLVEMENT

The clearest case of university involvement, of course, would be action in the university's name by its governing officers, usually a board of trustees and the president. We know of no such case but there were at some schools formal resolutions by faculties purporting to speak as faculty bodies rather than as individuals. There were also numerous instances of use by political groups, often composed of faculty or students but sometimes composed of persons not connected with the university, of institutional facilities and resources. After the Cambodian intervention political groups were frequently given access to university computers, research facilities, office space, auditoriums and classrooms, residential facilities, dining halls, telephone service, secretarial service, mailing permits, radio stations, mailing lists, and so forth. Computers were in use by students at several universities to analyze the voting records of congressmen. Mailing lists were used to send leaflets opposing congressmen up for reelection to alumni. University buildings were used as centers for the coordination of national student strikes over Cambodia, for the coordination of movements to elect candidates opposed to national policy in Vietnam, and for similar purposes.

A number of universities agreed to close for one or two weeks just before the November elections in order to give students and faculty more time to participate in the various congressional election campaigns. Last May great numbers of students and some faculty members viewed it as appropriate to shut down their universities in order to express their opposition to the Cambodian operation. Many demanded that their universities show sympathy with the protesters by suspending classes, waiving examination and paper requirements, and, in general, "altering normal academic expectations." Some universities complied with one or more of these demands, though whether administrators and faculties who acceded did so out of sympathy and a belief that they should so respond or out of prudence in an explosive situation is not clear and undoubtedly varied from case to case. One can certainly sympathize with beleaguered academics torn between the desire to keep their universities out of politics and to preserve them from crippling internal conflict. Yet the fact remains that many universities did edge closer to formal political involvement.

We cite these instances not to suggest that any particular university violated any federal law—we have too little information about particular cases to form a confident judgment and we certainly have no interest in broadcasting any such opinion. We cite these cases rather as examples of the politicization that grew up in our universities and to show that some aspects of that trend may bring universities within the ambit of the laws discussed in this monograph.

But another point must be stressed. We have rehearsed the many manifestations of politicization on American campuses to show that only some aspects of that phenomenon can be dealt with by present federal statutes. Speaking generally, the mood of politicization within the universities is probably beyond the reach of any law, and the political acts of individual students, faculty, and administrators in American political processes generally are not only beyond inhibition by statute but must, of course, remain so.

If the degree and nature of the politicization we have described is a serious social problem, and we think it is, only part of the social response can be legal in nature. Just as the core of the problem is one of mood and belief, so the solution will surely be primarily one of mood, belief, and the persuasive assertion of the traditional values of the academy. Law alone cannot sustain or enforce values that are not widely and deeply held.

BROADER INVESTIGATION NEEDED

Though this specialized study is not the occasion for it, there is, therefore, a need for broader investigation into the phenomenon of politicization and possible techniques of controlling it. It would be very useful, if it is possible, to locate the causes or the roots of student and faculty unrest, the widespread disenchantment with long-accepted academic values, and the willingness to employ violence. If we had a better understanding of causes, we might be able to devise more effective responses. But it may well prove impossible to find ultimate causes. Not only is the phenomenon extraordinarily complex and perhaps fed from more than one root, but most attempts to specify causes so far have not been notably successful and many have been strikingly superficial. A serious investigation of causes would have to take account of the fact that politicization and violence are not confined either to the United States or to universities. Severe student disorders and universities disruptions have occurred, among other places, in France, West Germany, Italy, Sweden, England, Japan, and India. The spread of the problems suggests that the problems and social tensions of the United States are not ultimately the cause of the phenomenon as so many have maintained. And it should be recalled that politicization, often accompanied by violence and the rhetoric of violence, is by no means confined to the universities, though it appears to be most acute there. These facts at least raise the question of whether we are not observing a deep, though hitherto unsuspected, crisis in western culture rather than a crisis defined by American universities. If this should turn out to be the case, the search for causes will be far more difficult and conclusions far less precise than one might at first hope. Still, the crisis, though general, does appear to be most acute or advanced in universities and that may suggest something, if not about causes then at least about predisposing factors.

Moving to this level of investigation, it might be possible and worthwhile to ask why universities as institutions have proved so vulnerable. Are there attitudes, more common in the academy than elsewhere, that lessen resistance to attacks from the particular quarters from which the most recent attacks have come? Is the vulnerability in part due to the development of values, practices, and structures adapted to resist attacks from the outside community, which universities have faced for centuries, but offering aid rather than hindrance to attackers within? Has there occurred a shift of gov-

erning power from university presidents to faculties so that effective management in crises becomes impossible for structural reasons, large committees being unable to make executive decisions? Are there structural or procedural changes that universities can adopt to render themselves less vulnerable to inside attack?

LONG-RUN EFFECTS

Beyond these issues, what are likely to be the long-run effects of continued academic politicization both upon the universities and the general society? How far is politicization likely to go and what forms will it take? How seriously is it likely to damage the spirit of free inquiry, particularly in the social sciences? What forms will public reaction take? Will financial support at present levels be available for politically oriented universities? If not, how will increasing demands for education beyond the high school level be satisfied? Must new institutions be devised to carry on indispensable intellectual and research work that can no longer be carried on effectively on university campuses? What effect would such an increased separation of scholarship and teaching have upon the teaching performance of universities, upon students, and ultimately upon the competence and intellectual orientation of our society?

THE ROLE OF LAW

Society need not, of course, await definitive answers to questions of this nature before responding to the problem of academic politicization. If a majority of Americans believe that politicization imperils the universities' most valuable functions, measures will undoubtedly be taken to counter that development. Rarely, if ever, do we wait to find the ultimate cause of social disorder before attempting to deal with it. No society has ever found "the" cause of crime or poverty, but every society has, with varying degrees of effectiveness, attempted to curb the one and alleviate the other. We deal, as we usually must, with symptoms rather than causes. The obvious analogy is to medicine which effects many of its cures by controlling symptoms that could kill until the body cures itself. Similarly, as has often been remarked, we do not so much solve our great social problems as get over them. Law, our oldest and most successful technique of social control, typically deals with individual and institutional aberrations by defining and inhibiting their unwanted symptoms through the application of civil and criminal sanctions. But law does more than inhibit through penalties. The legal definition of improper behavior is itself a moral force that clarifies and reinforces a society's expectations and values, helping to control conduct through moral consensus.

Of more immediate and practical importance than a search for the causes of university politicization, then, is an investigation of the manifestations and likely effects of the phenomenon, and the means, including the application of law, by which it can be controlled. Certain of these manifestations pose little more than practical difficulty. The use of violence can be punished directly by the criminal law without endangering other social values. The problems are primarily those of identification and fairness with which the criminal process has long had to cope. But other aspects of politicization, some of which have been mentioned here, are more subtle and difficult to reach without impairing freedoms worth preserving. In this area a study would have to face squarely issues that we cannot explore fully in the present, necessarily limited, study: the bearing of the First Amendment to the Constitution and that complex of values we sum up rather vaguely in the term "academic freedom." These are values that must not be overlooked either in the application of existing law or the devising of new laws, but they present questions on large and complex that they require separate treatment.

To raise these larger problems and to stress the relatively limited impact of present law upon them is not to deny that law any virtue. On the contrary, it has important contributions to make. Section 501(c)(3) of the Internal Revenue Code, for example, may be unable to reach much that is of concern but it can at least prevent the formal involvement of universities in politics, and that is an accomplishment of both practical and symbolic value. It sets some limit to a process that now appears threatening, and it may, by restating a basic value—the necessity of a firm line between education and indoctrination, between scholarship and propaganda—affect thought and action in areas to which its sanctions cannot and ought not be directly applied. That is at least a beginning.

EFFECT OF POLITICAL ACTIVITIES ON THE UNIVERSITY'S TAX EXEMPTION

Section 501(c)(3) of the Internal Revenue Code ("Code") exempts from income tax private [1] colleges and universities "organized and operated exclusively for . . . educational purposes. . . ." In addition, the Code permits individuals and corporations to deduct contributions made to such educational institutions. An educational institution qualifies for tax exemption and as a recipient of deductible contributions provided (1) that "no substantial part of the activities [of the institution] is carrying on propaganda, or otherwise attempting, to influence legislation" and (2) that the institution "does not participate in, or intervene in (including the publishing and distributing of statements), any political campaign on behalf of any candidate for public office."

Most private educational institutions have applied for and received a ruling from the Internal Revenue Service that they are tax exempt and that contributions to them are deductible. In addition, the Internal Revenue Service publishes a current list [2] of organizations, contributions to which are deductible. This listing amounts to an "advance assurance of deductibility," so that as long as an organization remains on the list, donors may, as a practical matter, count on their contributions being deductible.[3]

While donations to an organization remain deductible until notice to the contrary, any organization's tax exemption may be revoked retroactively. Thus, if the Internal Revenue Service determines that an educational institution became disqualified in a prior year, it could assert tax liability against the organization for all prior years for which the statute of limitations has not run. However, the deductibility of contributions made to the institution prior to notice of the challenge would not be affected. This can result in a seemingly anomalous situation where deductions are allowed for contributions to a non-exempt organization (as determined by retroactive revocation). Accordingly, the Internal Revenue Service has sometimes given public notice that it is withdrawing advance assurance of deductibility of contributions pending the completion of an investigation into the organization's tax-exempt status. Indeed, where the disqualifying event has high visibility (e.g., clear involvement in a political campaign) the Internal Revenue Service might even decide to withdraw advance assurance of deductibility before embarking on its investigation.

However, since the revocation of an exemption and the concomitant denial of deduction depend upon affirmative administrative action, a university or its donors will be adversely affected from a tax standpoint by political activities only if the Internal Revenue Service takes some action. Because the sanction of a revocation of an exemption is extremely severe both to the university and its donors, the Internal Revenue Service may be quite reluctant to act except in cases where the political activities of the institution are so pervasive that the institution may be clearly said to have abandoned its traditional and exclusive educational role. The administrative dilemma posed by the sanction of revocation is well recognized—there is no middle ground—and as the House Ways and Means Committee noted:

> The absolute prohibition upon involvement in political campaigns on behalf of any candidate for public office frequently results in the alternatives of unreasonably punishment or unreasonably light punishment.[4]

It is indeed paradoxical that the severity of the sanction of revocation probably rules out its application in isolated, but nevertheless significant instances of the very politicization of campuses (e.g., one-shot involvement in a national political campaign) that the statute intended to prohibit.

This is not to say that if a university engages in proscribed activity, it and its donors may indefinitely enjoy prohibited tax benefits by virtue of administrative indifference. The law may well be developing in such a way as to permit a private citizen to compel the Internal Revenue Service to act in the face of a clear violation of the statute if the Internal Revenue Service refuses to take the initiative itself. For example, in a recent case, *Green* v. *Kennedy*, 309 F. Supp. 1127 (D.C., D.C., 1970),[5] the Secretary of the Treasury, the Commissioner of Internal Revenue, and their entire staffs were ordered to stop issuing exemption rulings for, and approving deductions to, private schools in Mississippi without first affirmatively determining, pursuant to court-approved procedures, that the schools were not operated on a segregated basis. The plaintiffs in effect complained that through administrative indifference, the IRS was allowing tax benefits so thinly disguised "private" schools formed for the sole purpose of avoiding integrated public schools.

While a constitutional interest was present in *Green*, and may or may not be present in a case seeking to compel the Internal Revenue Service to enforce the law against a college engaging in political activity, in violation of the statute, a plaintiff might nevertheless be able to demonstrate a significant public interest relating to the dangers of the politicization on campuses above and beyond tax policy. In addition, it should be noted that in such a case the Internal Revenue Service could not maintain, as it did in *Green*, that the tax law is neutral on the subject. Rather, the Internal Revenue Service could only argue that in its administrative discretion it may properly choose not to enforce a clear congressional mandate, for whatever reason.

THE POLICY RATIONALE OF SECTION 501(C)(3)

The application of Section 501(c)(3) to universities will be influenced by the view that courts and the Internal Revenue Service take of the enactment's policy rationale, the goals that Congress intended it to implement. Our predictions of what the law permits and what it forbids must, therefore, take account of what policy is likely to be attributed to the statute.

The tax exemption is provided for entities "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals." The fact that a tax exemption is conferred indicates of course that the listed types of organizations are regarded as performing socially favored or preferred functions. Questions of whether such functions should be preferred and whether preference is appropriately expressed through a tax exemption are important but well beyond our subject. We are attempting, for purposes of

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prediction, to discern and describe a policy, not to evaluate it.

Two major rationales may be perceived as underlying Section 501(c)(3). The first may be termed a "tax equity rationale" and the second a "social policy rationale." The former would assign a more limited role and impact to the statute than the latter. We think it more likely that both policies underlie the statute and that its impact will therefore be wider. In any case, the statute is completely open to such an interpretation and we must take account in our predictions of the possibility that this reading will be applied.

The tax equity rationale, which is clearly present in the statute, rests upon the premise that Congress, wishing to subsidize a group of preferred activities, imposed conditions because of the inequity of permitting campaign contributions to be disguised as charitable or educational contributions. Under present tax law, the creation of an exempt organization is relatively easy, and the country has tens of thousands of them. If the ruse of channeling political contributions through such organizations were permitted, the old and well-established rule against the deductibility of those contributions would be easily circumvented.[6] The cure provided by the law is quite potent: if a single dollar of the organization's funds are spent in a campaign, the exemption is lost and the organization is no longer eligible for the tax deductible donations.[7] We do not mean to suggest that an equity rationale might not serve other policies. It is certainly conceivable, for example, that Congress thought the form of tax avoidance blocked by Section 501(c)(3) was particularly subject to abuse by the very wealthy and that the provision had the added merit of curbing unequal political power by preventing wealth from magnifying its political power by funneling contributions through exempt organizations. But the point is that a statute applied solely on a tax equity rationale would concern itself only with the expenditure of funds (or the use of facilities) on political matters. It would not, in all probability, reach the case in which a university endorsed or opposed a candidate for public office if no university moneys or facilities were involved.

Yet there seems to be something more to the statute's policy than this tax equity rationale suggests. There appears to be an element of social control, a desire to ensure that the performance of organizations engaged in certain socially preferred activities not be diluted or made ineffective by the addition of other, perhaps inconsistent, activities. Tax laws, after all, are not necessarily concerned with raising revenue and preventing evasion. They frequently have wide-ranging social goals, often to the exclusion of any revenue purpose. Examples abound. The federal tax on products made with child labor was not designed to raise a dollar of revenue but to price child labor out of the market because of the belief that such labor was a social evil. A more modern example is the provision for quick depreciation write offs of rehabilitated low income housing.

Section 501(c)(3)'s provision for the complete loss of tax exemption upon proof of participation in specified political activities may, similarly, express a congressional desire to define the proper social role of preferred organizations, to erect a wall between such organizations and politics analogous to the wall erected between Church and State by the First Amendment. Such a rationale would suggest that the statute applies, for example, to the campaign endorsement situation where no funds are expended. Acceptance of a social policy rationale, moreover, might make courts more willing to apply the statute in cases where the expenditure of funds might, on a tax equity rationale, appear insignificant.

Footnotes at end of article.

We think it quite plausible that the social policy as well as the tax equity rationale underlies Section 501(c)(3). Congress may reasonably have wished to erect a wall between preferred organizations and the political process for the benefit and well-being of both. We well cast the argument in terms of universities but it applies to all preferred organizations.

Universities are certain to be injured, and probably severely, by entry into politics. By becoming explicitly political an educational and scholarly institution will inflict injuries upon itself. This is one danger of academic politicization already mentioned: the passions generated by partisan conflict must inevitably erode the objectivity essential to education and scholarship. But injury is also likely to be inflicted from without. Universities that venture into politics will make political enemies. Those whose interests and positions are threatened will certainly retaliate, and one may confidently predict that a variety of reprisals and sanctions will sooner or later be visited upon a politically-active university. Depending as it does upon a continuing flow of funds from private individuals, businesses, and, increasingly, the federal government, as well as upon state and local property tax exemptions, the university is uniquely vulnerable to counterattack should it insist upon a political role. Congress might reasonably have wished to protect universities from this sort of injury by a prophylactic rule, expressed in a conditional tax exemption, that attempts to inhibit universities from supplying the provocation for political reprisal.

Looking at the other side, Congress may also have wanted to protect American political processes from university intervention. Here again, there is an analogy to the reasons for the separation of Church and State. Americans have always resisted the entry of churches into politics, precisely because churches are institutions of enormous prestige and influence. Similarly, the American veneration for education, evidenced in an unparalleled proliferation of institutions of higher education and a relatively enormous, and increasing, percentage of youths going beyond high school, has resulted in a very high level of prestige and influence for universities and their faculties. To be sure, that prestige and influence would suffer if universities took political stances, but they would probably have an impact. Congress may well have considered the advantage of universities in politics, resting as it would upon a reputation for learning and objectivity, to be as unfair as the political influence of churches, resting upon the religious sentiments of Americans.

These are some of the ideas that seem to cluster naturally about a statute that inhibits university political action. Perhaps they were relatively inchoate when Section 501(c)(3) and its predecessor statutes were enacted, or perhaps they seemed so obvious that they were not debated. There was certainly in 1954 no significant sentiment in favor of universities entering politics. Be that as it may, these policy ideas are familiar and congenial to most Americans; Section 501(c)(3) is easily read as embodying them, and they seem likely to affect the statute's interpretation and future development.

An examination of the law and such indications of congressional intent as are available increases the plausibility of the thesis that Section 501(c)(3) embodies a social policy rationale as well as a tax equity rationale. The language of Section 501(c)(3) is drawn more broadly than a tax equity rationale standing alone would require. A tax equity rationale, attempting to inhibit the diversion of funds from approved purposes to non-exempt purposes, would lead to the employment of accounting or transactional tests. Congress is capable of articulating, and has, in fact, often articulated such tests in the Internal Revenue Code. This statute, however, prohibits not diversion of funds but specified types of activities, whether or not they involve the expenditure of money. Thus, it forbids participation or intervention in a political campaign, both of which can be accomplished without the expenditure of the university's funds. It would appear, therefore, to be no defense that a university had intervened in a campaign, lending only its name and prestige to a candidate, while the necessary funds had been supplied by the candidate and other supporters rather than the university.

This reading of the policy of Section 501(c)(3) is clearly supported by the Treasury Regulations which state that participation or intervention in a political campaign includes "the making of oral statements," without requiring the expenditure of any funds.[8] The interpretation is further supported by the American Council of Education's guidelines issued on June 19, 1970, and the Internal Revenue Service's acknowledgement of the fairness and reasonableness of those guidelines. While the guidelines dwell for the most part on such matters as the provision by universities of free services or space to political groups, they also caution that "Extraordinary or prolonged use of facilities, particularly by nonmembers of the university community, *even with reimbursement*, might raise questions," (emphasis added) and that "no member of the academic community should speak or act in the name of the institution in a political campaign." Moreover, the Council's guidelines flatly state: "In order to assure compliance with the requirements of Section 501(c)(3), universities in their corporate capacities should not intervene or participate in any campaign by endorsing or opposing a candidate or taking a position on an issue involved in the campaign for the purpose of assisting or opposing a candidate."[9]

We may, therefore, properly approach questions arising in connection with Section 501(c)(3) on the assumption that it was intended to erect a wall between universities and partisan politics and not merely prevent the diversion of tax exempt funds. In that light the statute is both a more important policy and likely to be a stricter one in application.

WHAT ACTIONS ARE THE UNIVERSITY'S?

One of the most important limitations upon the reach of both the Internal Revenue Code and the Criminal Code is the requirement that the activity that triggers the application of sanctions clearly be the behavior of the university, not that of its individual members. Yet there is a policy dilemma here, one familiar to the law of corporations, labor unions, and other associations. Application of sanctions to an organization because of the activities of its individual members may, by inhibiting the member's individual behavior, cut far too deeply into individual freedom. Yet failure to attribute the individual's actions to the organization may allow the policy of the law to be defeated by an insubstantial change of form. Because of their looseness of organization and lack of structure, universities may raise this dilemma in a particularly acute way. The limited reach of Section 501(c)(3) and Section 610 should assuage fears that these statutes can be used to stifle dissent, and it certainly avoids at least one range of problems grounded in the First Amendment to the Constitution, which prohibits congressional abridgement of free speech. On the other hand, the limitation probably means that the law does not reach many, probably most, of the manifestations of academic politicization.

What time "belongs" to the university?

In deciding whether to attribute political activity (whether by students, faculty, or administrators) to the university it is important to bear in mind certain fundamen-

tal ways in which universities differ from other types of institutions. These differences require that rules perhaps appropriate in other contexts not be mechanically applied without recognition of the values at stake. Universities, for example, differ markedly from business corporations in that they have no clear tradition or understanding of what time belongs to the university. Neither faculty nor students are expected to work on a 9-to-5, five-day-a-week-schedule. Faculty are, of course, expected to meet their classes, but, at many institutions, students need only pass their examinations, class attendance being optional. Both faculty and students are left free to accomplish their academic work at times and places of their own choosing. This pattern of freedom is firmly established at most, perhaps almost all, major universities. It obviously poses almost insuperable difficulties to any attempt to state that the political activities of faculty members or students are attributable to the university because carried on during time that "belongs" to the university. This means, of course, that members of the university community have a great deal of time which they can, if they choose, devote to internal as well as external politics. The freedom inherent in the university's loose structure is susceptible to abuse, but that danger is not new. What is new is the form of the abuse.

Freedom of personnel

It is not clear that there is any satisfactory solution to this aspect of the problem. An attempt to fix by law or by university policy the time and effort that faculty and students owe to the university would be fraught with serious difficulties. The freedom and absence of structure that a university affords is not accidental; it is thought, probably correctly, to be conducive to scholarly effort. It arises from the recognition that for many people intellectual work is not best done according to a rigid schedule. Indeed, it may often be impossible to state what constitutes intellectual work. Random reading, reverie, chance meetings, informal conversation, work for non-academic institutions, all of these may and frequently do contribute to the stimulation and development of ideas. Schooling in the mechanical sense is best done by schedule. It is highly doubtful that education, in its broadest and most profound sense, can be. The informality of this "method" entails, of course, not merely the certainty of some abuse but of waste. Those who do not achieve some degree of self-discipline will not be productive faculty members or, as students, will waste the valuable years of freedom the university affords. But that has generally been thought a price worth paying in order to permit others to develop and achieve to a degree they could not in a regimented atmosphere.

There is, in addition, the related point that control of his time is one of the major items of compensation for the faculty member. If that highly prized freedom were drastically circumscribed, whether by law or by university regulation, the real income of faculty would decline and universities would have either to find money to pay considerably larger salaries or lose many of their most valued teachers and scholars to alternative forms of employment. This, however, is a factor that cuts both ways. The politicization of the universities with its concomitant turmoil and embroilment of faculty in administrative issues also cuts heavily into the faculty member's time and energy, depriving him of much that he finds attractive about university life. Already there appears to be some shifting of faculty from more to less turbulent institutions and from universities to research institutes.

Freedom of students

Finally, it is desirable that the law be interpreted so that universities and their donors be penalized only for actions that the responsible officials of the universities can control without infringing vital areas of academic freedom. It would be quite unfair, for example, to deprive a university of its tax exemption because of lobbying done by students who used the university's name in their effort even though the university had not encouraged or condoned the activity. Such a reading of the law would be more than unfair, however; it would be unwise from the standpoint of those who wish to limit university political action. Some of the more radical students on American campuses have avowed their intention of destroying universities, and a law that attributed their behavior to the university would give them a potent weapon for that purpose. The law would encourage political activism by students who wished to destroy the university's tax exemption. On the other hand, a law that imposes sanctions on actions taken by the responsible university officials strengthens their hands in refusing to take political actions demanded of them by some students and some faculty.

Actions of the university community

The looseness of university governance structures and the diffusion of decision making and effective power through the university community make it difficult to state firm rules for deciding when it is the university that acts. Nevertheless, some criteria may be derived by considering three major groups within the university that have substantially different degrees of control. The group that may most clearly commit the university consists of the board of trustees, the president, and the senior administrative officers. Next on the spectrum is the faculty, and the group with the least power to commit the university as such is the student body.

The extremes of the spectrum present little problem. When the board of trustees or the president commits a university to the contribution of funds for lobbying or for a candidate's campaign there can be do doubt that the university has acted. The same conclusion would, of course, follow if the president endorsed a candidate in the university's name, or if he directed that facilities be made available to a candidate or to a particular political organization, unless the university can prove that the act was wholly outside the president's authority and the act is immediately rescinded. We stress that the fact the university has acted in these situations does not conclude the legal issue, for it must still be determined, among other things, whether the activity is a forbidden one. Similarly, university action would seem to be present if other administrative officers, including the deans of departments or professional schools, made contributions of department or school funds or made available facilities to political groups. This conclusion is buttressed by the consideration that such subsidiary administrative officers are subject to the control of the central administration in these respects and are sufficiently high in the administrative hierarchy to make it equitable to charge the university with their acts. It would not seem fair to charge the university with an act counter to university policy by a clerk with only ministerial functions, unless the university somehow endorsed the act or condoned its repetition.

The student body, on the other hand, is not subject to university control in the same way, nor should it be. If students wish to donate their own efforts, time, and money to political causes, that is certainly not the act of the university. Students may, of course, purport to speak in the name of the university, but it would seem impossible, realistically, for the university to prevent that. Student activity may, of course, become university activity if the university adopts, endorses, or encourages it. To be perfectly safe under the tax law, the university should probably make it clear that students commit or speak for the institution.

FACULTY ACTIONS

The question of whether faculty activities can be attributed to the university is more difficult. There is no doubt that many faculties have acquired, as a practical matter, if not as a matter of formal power, the ability to commit universities to courses of action relating to educational policy, discipline, and the like. There is also no doubt that a faculty which purports to speak or to act as the faculty of a particular institution is viewed by many persons in the general public as committing the university's prestige and influence, if not as being synonymous with the institution. For these reasons, there is force to the argument that, for example, a formal faculty resolution endorsing a candidate or supporting proposed legislation should be taken as the act of the university. Since it is reasonable to assume a faculty would not commit its university in an attempt to deprive the university of its tax exemption, a rule that formal faculty political action was university action would thus contribute to one of the major policy objectives of Section 501(c)(3) by tending to keep universities out of partisan politics. On the other hand, the rule has its difficulties. While it is clear that individual faculty members or groups of faculty members who engage in political activity are not acting on behalf of the university, what of formal actions by faculties of particular departments or professional schools within the university? If, for instance, a law school faculty endorses a candidate or adopts a resolution concerning legislation, can that action be attributed to the entire university? The answer to that question is, under existing law, not at all clear but such faculty actions would seem to fall within the danger area. Possibly the application of the law would vary with the response of the university, the threat to tax exemption being greatest where the university appears to endorse the faculty's right to speak on such matters as a university faculty, and least where the university makes it clear that the action is not that of the institution.

It should be stressed that a rule of law inhibiting faculties from taking political positions would in no way imperil academic freedom. That value would be endangered by a contrary rule permitting faculties by majority vote to purport to bind and to represent the opinions and consciences of their dissenting colleagues.

THE PROHIBITION AGAINST ATTEMPTING TO INFLUENCE LEGISLATION

The first of Section 501(c)(3)'s two prohibitions of political activity—an exempt organization is one "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation"—raises two additional major issues: (1) What constitutes an attempt to influence legislation? and (2) How does the law measure a "substantial part" of the university's activities?

What constitutes an attempt to influence legislation?

Section 501(c)(3) defines the nature of the prohibited activities discussed in this section only as "carrying on propaganda, or otherwise attempting, to influence legislation." The apparent simplicity of this specification conceals difficult problems.

Certainly the statute would be violated[10] by direct lobbying of legislators in an attempt to influence their votes on pending or imminent bills not directly related to the operation of the university. There are, however, two other types of activities that are classifiable as attempts to influence legislation. The first of these is university issuance of statements to the general public about legislation or about issues central to pending or imminent legislation. The second is

Footnotes at end of article.

university involvement with groups that are attempting to influence legislation.

That addressing the general public may constitute an attempt to influence legislation is clear, but the Internal Revenue Service's interpretation of the statute may be overly limited and technical in one respect. The regulations define an organization that engages in a substantial amount of a prohibited activity as an "action organization" and continue:

An organization will be regarded as attempting to influence legislation if the organization—

(a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(b) Advocates the adoption or rejection of legislation.

The term "legislation" . . . includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.[11]

So interpreted the regulations would appear not only to conflict with the broader wording of the statute but to enunciate a trivial policy. Nothing of any importance would be accomplished by a law that permitted a university to engage in intensive propagandizing but threatened it with a loss of its tax exemption only if the propaganda included an explicit suggestion that legislators be contacted. The IRS Exempt Organizations Handbook, however, does not read the law as requiring a particular form of words: "The proscribed activity . . . includes all appeals to the general public, not merely those that contain a request to contact a legislator or take other specific action. . . . If the underlying purpose is the advocacy of particular legislation, then there has been an attempt to influence legislation within the meaning of the Code."[12] The Handbook's interpretation seems obviously correct.

There is another apparent inconsistency, however, since other regulations suggest the propriety of attempts to influence legislation. Thus, the regulation covering charitable organizations states:

The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under Section 501(c)(3) so long as it is not an "action" organization . . .[13]

The regulation covering exempt educational organizations states:

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.[14]

This may seem to suggest that so long as a unversity presents a fair statement of the facts it can advocate or oppose legislation. So read, the regulation would run contrary to the language of Section 501(c)(3) as well as to its policy. The inconsistency disappeared, however, if we read the permissive regulations as designed to protect statements made in an explicitly educational context. Thus, arguments made in the classroom, in adult education seminars, and the like, do not endanger the institution's tax exempt status unless they take on the character of persistent propagandizing. An Internal Revenue Service ruling granting tax exempt status to an organization devoted to consideration of social, political, and international questions by the promotion and sponsorship of a public forum noted the fact that the organization's charter specifically stated it should have no institutional point of view.[15]

The safest interpretation of the law, therefore, and the one most consistent with its language and policy would seem to be that universities in their official capacities should not take positions with respect to pending or imminent legislation or with respect to issues that control attitudes toward such legislation. Moreover, they should be careful that their public lectures, forums, and invited speakers do not take on the character of propagandizing by representing only one point of view.

A related question is whether Section 501(c)(3) will be interpreted as preventing a university from conducting a campaign to influence legislation closely related or incidental to its operations or status as an educational institution. For example, if a university appeared before a state legislature to present its views on a proposed state tax applicable to private universities or a proposed state law regulating the conduct of students, would the university be held to have engaged in prohibited lobbying? In the leading case, *Slee* v. *Commissioner* (involving the exempt status of the American Birth Control League), Judge Learned Hand distinguished between attempts to influence legislation relating solely to the organization's status or ability to operate and attempts to influence legislation bearing upon broader public policy. An example of the former, according to Judge Hand, would be a university "constantly trying to get appropriations from the Legislature; for all that, it seems to us still an exclusively educational institution."[16] On the other hand, efforts by the Birth Control League seeking the repeal of laws dealing with conception, were branded by the court as political, and not exclusively charitable, educational, or scientific.

Thus, under *Slee*, all attempts to influence legislation relating to the organization's status or operation are permissible, and all attempts to influence other types of legislation are prohibited. In 1934, however, Congress amended the statute to prohibit attempts to influence legislation but only if constituting a "substantial" part of the organization's activities. This amendment can be read in the light of *Slee* as permitting any degree of legislative activity which relates to the status and operation of the organization. Alternatively, the statute may be viewed as completely overruling *Slee*, so that any attempt to influence legislation must be insubstantial. This appears to be the current interpretation of the statute, as illustrated by Revenue Ruling 70-449, 1970-35 IRB 9. In this ruling the IRS held that testimony by the head of the biology department of a university before a legislative committee regarding the effects of proposed legislation on research in the department was not an attempt to influence legislation. The ruling did not rely on the obviously available ground that the appearance was related to the university's operation, but rather held that the prohibition of attempts to influence legislation contemplates affirmative action by a university and not a "mere passive response to a committee invitation" to testify. Further, it should be noted that in two other areas where the tax law imposes a blanket prohibition upon attempts to influence legislation, Congress has deemed it necessary expressly to exclude activities addressed to legislation about the existence or operation of the party involved (Code §§ 162 (e) and 4945 (e)). Since Section 501 (c) (3) contains such an exception, it could be argued that the substantiality test applies to all attempts to influence legislation. While this is certainly a conceivable interpretation of the statute and comports with its literal language, the result seems neither wise nor necessary. There is no apparent policy reason why a university should not lobby about legislation which speaks directly to its own educational performance. The "passivity" requirement of the ruling, moreover, is artificial since in most cases the university could arrange to be "invited." This problem probably should be clarified by regulation or further legislation.

A problem of a different order relates to the purposes for which organizations may attempt to influence legislation. Some cases hold that the proscriptions of Section 501(c)(3) apply only to the support of legislation that does not further the public interest. Thus, the Court of Appeals for the Eighth Circuit held in *St. Louis Union Trust Co.* v. *United States* that the St. Louis Bar Association did not violate the prohibition against attempting to influence legislation although the association drafted, supported, and opposed legislation. The court's theory was that the association was "devoted to improvement of the law and of the administration of justice. . . . This is public, not private, betterment."[17] This approach was in accord with the Second Circuit in *Dulles* v. *Johnson* which held attempts to influence legislation by a bar association to be outside the ambit of the statute on the ground that the attempts were "not intended for the economic aggrandizement of a particular group or to promote some larger principle of governmental policy."[18] The Third Circuit, however, has held that all attempts to influence legislation are prohibited by the statute, no matter what the organization's purpose and regardless of the public spirit of the organization's position.[19] This is true for at least two reasons. First, neither the language of the statute nor its murky legislative history give any hint of or opening for a distinction according to the court's view of the merits of the legislation. Second, the unguided judgment of what positions are in the public interest is one not properly confined to courts or administrators. As the Third Circuit said in *Kuper* v. *Commissioner:*

Congress wisely refrained from distinguishing between types of legislation, very likely in order not to place upon the courts the usually impossible task of determining whether any particular law is unselfish and in the public interest or whether it serves private or selfish interest.[20]

That the Internal Revenue Service agrees with this position is indicated by the fact that it has challenged, successfully, the exemption of a national conservation group (the Sierra Club) which was opposing legislation on grounds that many, perhaps most, people would think in the public good.

A serious problem may be that of the university's involvement with groups that are engaging in direct lobbying of legislators or addressing the public in an effort to influence legislation. This problem may arise frequently because of the intense interest of faculty and students in political issues. Again, individual or group action not endorsed or supported by the university poses no threat to the university's tax exempt status. In determining "support," some realistic distinctions are necessary. Some uses of university funds and facilities can hardly be said to constitute support of the activity without infringing the proper area of individual freedom. Thus, the fact that an attempt to influence legislation is made by a faculty member on salary or a student on scholarship may not properly be held to implicate the university. Similarly, the use of some types of university facilities is inevitable in such cases. If only because many students and faculty members live on campus and customarily use certain facilities, such as the library, for a variety of purposes. The use of other types of facilities, such as computers, mailing lists, secretarial service, and the like for work not directly connected with educa-

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tion is not customary or inevitable and would raise serious problems.

It seems clear, of course, cash payments to groups attempting to influence legislation, or giving them the use of university facilities without compensation or with only token compensation, would raise a serious danger. The guidelines issued by the American Council of Education state that there may under some circumstances be danger even when there is full compensation: "Extraordinary or prolonged use of facilities, particularly by nonmembers of the university community, even with reimbursement, might raise questions." [21] Questions may also be raised if the university alters normal academic expectations and requirements in order to facilitate efforts by members of the university community to attempt to influence legislation. The danger that the university will be held to have endorsed or supported an attempt to influence legislation is likely to be greatest if the university's action is in response to demands from a group promoting a known viewpoint.

Are the acts a substantial part of the university's activity?

Attempts to influence legislation are banned only when they comprise a "substantial" part of the university's activities. The Internal Revenue Service Handbook succinctly describes the difficulties inherent in this unexplained test:

There is no simple rule as to what amount of activities is substantial. The one case on this subject is of very limited help. The *Seasongood* case held that attempts to influence legislation that constituted five percent of total activities were not substantial. This case provides but limited guidance because the court's view as to what sort of activities were to be measured is no longer supported by the weight of precedent. In addition it is not clear how the five percent figure was arrived at.

Most cases have tended to avoid any attempt at percentage measurements of activities. The central problem is more often one of characterizing the various activities as attempts to influence legislation. Once this determination is made, substantiality is frequently self-evident.[22]

This suggests that the IRS may not measure substantiality by the fraction of the university's income devoted to attempting to influence legislation but may instead apply an absolute-amount test, perhaps holding any activity substantial that is not in absolute terms insignificant or de minimis. But an opposite view may be indicated by a Senate Committee report made in connection with the Tax Reform Act of 1969 which revised the law of private foundations. Speaking of Section 501(c)(3), which remains unchanged in its application to universities, the Committee stated:

[A] large organization, merely because of the substantiality test, may engage without consequence in more lobbying than a small organization. . . . Moreover, the standards as to the permissible level of activities under the present law are so vague as to encourage subjective application of the sanction.[23]

The confusion is not significantly dispelled by the Internal Revenue Service's other applications of the statute. In suspending advance assurance of deductibility for contributions made to the Sierra Club the IRS stated:

In . . . determin[ing] . . . whether political activities are a substantial part of an organization's activities . . . the activities which constitute attempting to influence legislation [are not] limited merely to time and effort directly devoted to acts of advocacy or to writing or otherwise directly contracting legislators . . . [W]hile dollar amounts expended in carrying on activities to influence legislation may be some evidence of the substantiality of the activity, the relative amounts in dollars spent for such activities in relation to total dollars expended by an organization is not controlling. The test is one of activity.[24]

This uncertainty about substantiality ought to be cleared up by the Internal Revenue Service or by further legislation. As matters stand, universities cannot be sure what is permitted and both the IRS and the courts may be reluctant to apply the severe sanction of the loss of exempt status in any but the clearest cases. The difficulties with a test keyed to a flat percentage of time and money expended are obvious. In a complicated and relatively unstructured organization, such as a university, measurement of total time expended on all activities attributable to the university would be extraordinarily complex and probably uncertain. And if such a measurement could be accomplished, a percentage figure, such as the suggested five percent, would permit very significant amounts of lobbying by large institutions. A university with a total annual budget of twenty million dollars could devote one million dollars to attempting to influence legislation every year, and that is the budget of a not very large university. Perhaps the most satisfactory interpretation of the substantiality requirement would be that all attempts to influence legislation are prohibited unless they are isolated and insignificant.

THE PROHIBITION AGAINST PARTICIPATION OR INTERVENTION IN A POLITICAL CAMPAIGN

When the bill that was to become the Internal Revenue Code of 1954 was under consideration in the Senate, Senator Lyndon Johnson of Texas proposed an amendment from the floor to deny income tax exemption to organizations that participate or intervene in political campaigns on behalf of candidates. The amendment was accepted by the Chairman of the Senate Finance Committee and ultimately became the provision of Section 501(c)(3) now under discussion. Senator Johnson did not, however, discuss his purpose when he introduced the amendment and there simply is no significant or illuminating legislative history to guide its interpretation.[25]

This "campaign" branch of Section 501(c)(3) differs importantly from the provision relating to attempts to influence legislation because there is no requirement that the exempt organization's campaign activities be a substantial fraction of its total activities. Instead, the prohibition here is absolute. As the Internal Revenue Service has repeatedly stated, the exemption of an organization is forfeited by any act of participation of intervention.

The contours of the proscription are indicated by a few Treasury Regulations and Internal Revenue Service rulings. A Treasury Regulation defining "action organizations", which are not tax exempt, makes it clear that "the term 'candidate for public office' means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local." [26] The Internal Revenue Service has ruled that the legal issue under this section is not affected by the "nonpartisan" nature of endorsement of candidates. In denying status as a social welfare organization in a ruling equally applicable to educational institutions, the IRS said:

The organization was formed for the purpose of promoting an enlightened electorate. Its primary activity in furtherance thereof is rating candidates for public office on a nonpartisan basis. In order to acquaint voters with candidates for local public offices, the organization analyzes the candidates' qualifications, such as education and experience. On the basis of its conclusions, it rates candidates as average, good, or excellent, and disseminates these ratings to the public.

Comparative rating of candidates, even though on a nonpartisan basis, is participation or intervention on behalf of those candidates favorably rated and in opposition to those less favorably rated. Because such participation or intervention does not come within the definition of promotion of social welfare and this activity is the organization's primary activity, it follows that the organization is not operated exclusively for the promotion of social welfare within the meaning of the applicable regulations.[27]

Though the ruling directly concerned Section 501(c)(4), its rationale is completely applicable to Section 501(c)(3).

The statute prohibits participation or intervention "on behalf" of any candidate. The Treasury Department apparently takes the view that participation or intervention is permitted if not intended to affect any candidate's chances. In connection with the Tax Reform Act of 1969, which altered the law as to private foundations but not as to educational institutions, the Treasury stated that existing law under Section 501(c)(3) permitted voter registration drives, educational campaigns about issues presented for consideration by the general electorate, or panel discussions with candidates.[28] An organization's exemption would, of course, be endangered if any of these activities was undertaken in a nominally neutral way but was actually designed to advance or injure the cause of any particular candidate. Thus, a voter registration drive may be a permitted activity for a university if it is general and neutral, but it might easily be a prohibited activity if it were limited geographically or in any other way that would be likely to alter the outcome of an election campaign.[29]

This interpretation seems not to be consistent with either the tax equity or social policy rationale of the statute. Perhaps a better reading of the law is that the prohibition of intervention "on behalf of any candidate" means more than neutrality, and requires complete abstention. It is highly doubtful, for example, that a university that made equal cash contributions to all candidates in a race would be held not to have participated or intervened on behalf of any candidate. Allowing such contributions would certainly give an unfair advantage to political contributions made through the university and would not serve the goal of keeping universities out of partisan politics. The neutrality standard makes sense when the university is not making any contribution of its own. Thus, a university's permission to candidates to use it facilities for a fee should not be participation or intervention, provided the facilities are made equally available to all candidates. The neutrality standards also makes sense when the candidates contribute to the university's educational function. Thus, it would appear proper for the university to make an auditorium available, without charge, for a panel discussion, or a series of lectures, by all candidates before an audience made up from the university community. In short, any official act of the university that assists any or all candidates may be a forbidden participation or intervention unless the act occurs in a demonstrably educational context or the university is fully compensated for the use of its facilities.

A similar problem is raised when the university rearranges its schedule or alters its normal academic expectations and requirements to permit faculty and students to participate in political campaigns. We are not able to agree fully with the thrust of the advice offered on this subject by the Guidelines of the American Council on Education which state:

The mere rearrangement of an academic calendar for the purpose of permitting students, faculty and other members of the academic community to participate in the election process, without more, would not be deemed intervention or participation by the

Footnotes at end of article.

institution itself in a campaign on behalf of a candidate. Nor does it constitute proscribed legislative activity. This assumes that the recess period is in fact a substitute for another period which would have been free of curricular activity, and that the university itself does not otherwise intervene in a political campaign. During the period of the recess, members of the academic community should be entirely free to participate in the election process or not as they choose and should be so advised. The case may be different if the academic calendar, in fact, is shortened rather than rearranged for the purpose of permitting students, faculty and other members of the academic community to participate in the election process. In that case the question might be raised whether releasing faculty and staff members from normal duties, with pay, to participate in the process represents an indirect participation by the institution itself in a political campaign on behalf of a candidate for public office. Presumably those whose employment obligation is not limited to or governed by the academic year could be permitted to adjust their vacation period to permit time off during a political campaign in lieu of a vacation at another time. (Shortening of the calendar could also generate complaints that the institution is not providing a full term of instruction.[30]

There may be no problem if the academic calendar is rearranged as a permanent matter and this decision is taken without reference to particular issues and campaigns. But there would appear to be at least the possibility of a danger if the calendar is rearranged at the request or demand of groups within the university community that the university knows intend to take one side in a campaign. In such circumstances, arguably, the university may be contributing to the campaign just as much as if it ran a voter registration drive that it knew would substantially aid one candidate rather than the other. Making up the classes missed in a rearrangement of the calendar may avoid the charge that the university indirectly financed candidates but it does not avoid the reality of a dramatic intervention in the campaign.[31]

There may be, however, one type of exception to the general rule that a university's involvement with a political campaign must be neutral. Treasury Regulations about unrelated business income contain the following example:

Example (5). Y, an exempt university, provides facilities, instruction and faculty supervision for a campus newspaper operated by its students. In addition to news items and editorial commentary, the newspaper publishes paid advertising. The solicitation, sale, and publication of the advertising are conducted by students, under the supervision and instruction of the university. Although the services rendered to advertisers are of a commercial character, the advertising business contributes importantly to the university's educational program through the training of the students involved. Hence, none of the income derived from publication of the newspaper constitutes gross income from unrelated trade or business. The same result would follow even though the newspaper is published by a separately incorporated section 501(c)(3) organization, qualified under the university rules for recognition of student activities, and even though such organization utilizes its own facilities and is independent of faculty supervision, but carries out its educational purposes by means of student instruction of other students in the editorial and advertising activities and student participation in those activities.[32]

The theory behind this example appears to be that a student newspaper (or, one would suppose, radio station) may do things denied to the university as a whole because part of the training function is to operate like a regular, commercial newspaper. For that reason, students may solicit advertisements and the paper may receive income that would be taxable if the university itself had done the same thing. By a parity of reasoning, it seems likely that the student newspaper, as part of the training function, may take editorial positions on legislation and political candidates just as other newspapers do without costing the university its tax exemption under Section 501(c)(3). But it must be noted that this conclusion cannot be said with certainty to be the law. The IRS is presently investigating the *Columbia Daily Spectator's* tax exemption because of that paper's editorial stands.[33]

FOOTNOTES

[1] Public colleges and universities are exempt from the federal income tax because they are arms of the states or their instrumentalities which are exempt from tax on a constitutional basis. Likewise, contributions to public colleges and universities are deductible because Code § 170 allows a charitable deduction for contributions to states, their instrumentalities and subdivisions, as long as the gift is made for exclusively public purposes.

[2] Cumulative List of Organizations described in section 170 of the Internal Revenue Code of 1954, Publication No. 78 (Rev. 12–31–68). (Hereinafter cited as Cumulative List.)

[3] Cumulative List, p. i, ii: "Where an organization listed in this publication ceases to qualify as an organization contributions to which are deductible under section 170 and the Service subsequently revokes a ruling or a determination letter issued to it, contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable until (1) the date of publication of an announcement in the Internal Revenue Bulletin that contributions are no longer deductible or (2) a date specified in such an announcement where deductibility is terminated as of a different date.

In appropriate cases, however, this advance assurance of deductibility of contributions made to an organization listed in this publication may be suspended pending verification of continuing section 170(c) qualification. Notice of such suspension will be made in a public announcement by the Service. In such cases allowance of deductions for contributions made after the date of the announcement will depend upon statutory qualification of the organization under section 170.

In any event, the Service is not precluded from disallowing any contributions made after an organization ceases to qualify under section 170 where the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization which gave rise to the loss of qualification." See also Rev. Proc. 68–17, 1968–1, Cum. Bull. 806.

[4] H.R. Rep. No. 413, 91st Cong., 1st Sess., pt. 1, p. 32 (1969).

[5] Appeal to the U.S. Supreme Court dismissed for want of jurisdiction, June 15, 1970; Cannon v. Green, 38 U.S.L.W. 3496 (U.S. June 15, 1970).

[6] See 26 U.S.C. § 162(e)(2); 26 U.S.C. § 170(c); 26 U.S.C. § 276.

[7] **Section 170, governing the deductibility** of contributions to exempt organizations, has long contained the clause denying a deduction for contributions to organizations that attempted to influence legislation. Only last year it was amended to add the clause against participation or intervention in political campaigns. But the Internal Revenue Service had previously issued regulations interpreting section 170 as containing the second prohibition.

[8] Treas. Reg. § 1.501(c)(3)–1(c)(3)(iii) (1967); all the Treasury Regulations under § 1.501(c)(3) are reprinted in Appendix B.

[9] American Council on Education (ACE) Guidelines, Appendix C, p. 48. A complete text of the ACE Guidelines appears in Appendix C.

[10] Throughout the discussion of prohibited activities we will assume, unless we raise the issues specifically, there to be no question that the university is acting and that the action is a "substantial part" of its activities.

[11] Treas. Reg. § 1.501(c)(3)–1(c)(3(ii) (1967).

[12] U.S. Treasury Department, Internal Revenue Service, *Exempt Organizations Handbook*, § 762(2); see also *The Tax Exempt Organization, A Practical Guide* (IRS Handbook), para 419.01, pp. 7809 (CCH, 1969).

[13] Treas. Reg. § 1.501(c)(3)–1(d)(2)(1967).

[14] Treas. Reg. § 1.501(c)(3)–1(d)(3)(i)(b) (1967).

[15] Rev. Rul. 66–256, 1966–2 Cum. Bull. 210.

[16] 42 F. 2d 184, 185 (2d Cir. 1930).

[17] 374 F. 2d 427, 435–36 (8th Cir. 1967).

[18] 273 F. 2d 362, 367 (2d Cir. 1959), *cert. denied*, 364 U.S. 834 (1960).

[19] Kuper v. Commissioner, 332 F. 2d 562 (3d Cir.), *cert denied*, 379 U.S. 920 (1964).

[20] *Ibid.*, p. 563.

[21] ACE Guidelines, Appendix C. p. 48.

[22] U.S. Treasury Department, Internal Revenue Service, *Exempt Organizations Handbook*, § 764; see also *The Tax Exempt Organization, A Practical Guide* (IRS Handbook), para. 419.03, p. 79 (CCH, 1969).

[23] S. Rept. No. 552, 91st Cong., 1st Sess., p. 47 (1969).

[24] Letter from the District Director to Sierra Club, Dec. 16, 1966, reprinted in 6 P–H Fed. Taxes para 54,664, p. 54, 528.

[25] 100 Cong. Rec. 9604 (1954).

[26] Treas. Reg. § 1.501(c)(3)–1 (c)(3)(iii) (1967).

[27] Rev. Rul. 67–368, 1967–2 Cum. Bull. 190.

[28] Technical Explanation of Treasury Tax Reform Proposals, prepared by the Department of the Treasury, dated April 22, 1969, and contained in U.S. House of Representatives Committee on Ways and Means, Committee Print on Tax Reform Proposals, April 22, 1969, at p. 127.

[29] The Senate Finance Committee in its report (S. Rept. No. 552, 91st Cong., 1st Sess., p. 49 (1969) on the Tax Reform Act of 1969 (H.R. 13270)) stated that: "The committee believes that it is impossible to give assurances in all cases that voter registration drives would be conducted in a way that does not influence the outcome of public elections. In fact, the usual motivation of those who conduct such drives is to influence the outcome of public elections."

[30] ACE Guidelines, Appendix C, p. 48.

[31] Since the Commissioner of Internal Revenue has acknowledged the fairness and reasonableness of the ACE Guidelines, a university which has rearranged its schedule may be able to rely on those guidelines. However, the legal effect of the guidelines is unclear.

[32] Treas. Reg. § 1.513–1(d)(4)(iv) (1967).

[33] See *The New York Times*, June 27, 1970, p. 1, col. 7.

CIVIL RIGHTS ENFORCEMENT PROGRAM

Mr. HART. Mr. President, the U.S. Commission on Civil Rights has recently completed a far-reaching study of the civil rights enforcement program of all our Federal departments and agencies having responsibilities in this field.

It gives an important comprehensive picture of the efforts of our Federal Government to implement the civil rights bills that Congress has enacted in the

civil rights field. Its press release reports that—

The most serious flaw in the enforcement effort has been the lack of overall direction and coordination which has resulted in agencies operating independently with little recognition or understanding of what the Government's total civil rights program is or the role they should play in carrying it out.

This release reports the Commission warning that department and agency failures "to make maximum use of procedures and mechanisms available to them" raise "the possibility that the present civil rights laws will be nullified through ineffective enforcement." Such a result would bode grave hurt to the country and must be avoided. But it is essential that the Commission's conclusion faults Congress, too: The departments and agencies require more adequate staff and financial resources to carry out their civil rights responsibilities. We in Congress share with the departments the responsibility for delivering on the promises contained in the civil rights laws we have enacted. All of us should welcome the Civil Rights Commission's report and give it careful study.

I ask unanimous consent that the Commission's news release summarizing the report be printed in the RECORD.

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

CIVIL RIGHTS ENFORCEMENT PROGRAM

WASHINGTON, D.C.—Federal departments and agencies having civil rights responsibilities have failed to make maximum use of procedures and mechanisms available to them, thus raising the possibility that present civil rights laws will be nullified through ineffective enforcement, the United States Commission on Civil Rights declared today in a report, "The Federal Civil Rights Enforcement Effort."

Representing one of the most ambitious undertakings in the history of the Commission, the report is based on a study of some 40 departments and agencies. It was undertaken to determine how effectively the Government as a whole has geared itself to carry out civil rights responsibilities embodied in the various constitutional requirements, congressional legislation and Presidential Executive orders which govern its activities.

"The plain fact is that some of these [civil rights] laws are not working well," the Commission said, but it noted that the inadequacies did not originate with the present Administration, "nor was there any substantial period in the past when civil rights enforcement uniformly was at a high level of effectiveness.

"Rather, the inadequacies are systemic to the Federal bureaucracy and it is only through systemic changes that the great promise of civil rights laws will be realized."

The most serious flaw in the enforcement effort has been the lack of overall direction and coordination which has resulted in agencies operating independently with little recognition or understanding of what the Government's total civil rights program is or the role they should play in carrying it out, the Commission said.

To help correct this deficiency the Commission recommended that the President establish a special civil rights Subcommittee of the White House Council on Domestic Affairs and give it specific responsibilities in this area. These would include identification of civil rights problems, development of specific national goals and establishment of governmentwide priorities, policies and timetables for their achievement.

The Commission also recommended the establishment of a Division of Civil Rights within the newly created Office of Budget and Management which would work closely with the civil rights Subcommittee of the Domestic Affairs Council.

This new division would provide civil rights guidance and direction to budget examiners and other units. In addition, the Commission recommended that the various OBM units be directed to give high priority to civil rights considerations in their dealings with Federal departments and agencies.

Existing compliance and enforcement mechanisms would be evaluated by the OBM and where necessary, appropriate changes would be recommended to assure vigorous and uniform civil rights implementation.

Coordination between the operation of substantive programs and civil rights enforcement would also be evaluated by the OBM which would make recommendations, where necessary, for changes to improve coordination.

In addition, the Commission recommended that the chief civil rights officer of every Federal department and agency be upgraded to the level of that of officials in charge of agency programs, that the departments and agencies be provided with the increased staff and financial resources necessary to carry out their civil rights responsibilities with maximum effectiveness, and that civil rights compliance and enforcement efforts be increased to assure adequate attention to the problems of such groups as Spanish surnamed Americans, American Indians and women.

Additional recommendations to strengthen the Federal civil rights enforcement effort were made in the areas of employment, housing, the administration of Federal programs and the activities of Federal regulatory agencies (the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Power Commission, the Federal Communications Commission, the Federal Trade Commission, and the Securities and Exchange Commission.)

Differences in the degree of effectiveness of civil rights enforcement efforts were found among various departments and agencies, but the Commission said this did not indicate the implementation by these agencies of civil rights laws had been a total failure.

"Some agencies have enjoyed marked success in carrying out their civil rights responsibilities. In addition, agencies have been successful in carrying out certain aspects of their responsibilities and unsuccessful in carrying out others."

The study did, however, reveal a number of fundamental weaknesses in civil rights enforcement that are common to most agencies, regardless of the programs they administer or the civil rights laws they enforce.

Among these weaknesses are:

Inadequate staff and other resources to conduct civil rights enforcement activities with maximum effectiveness.

Lack of authority and subordinate status of agency civil rights officials.

Failure to define civil rights goals with sufficient specificity or breadth.

Failure to coordinate civil rights and substantive programs.

Undue emphasis on a passive role, such as reliance on receipt of complaints, in carrying out civil rights compliance and enforcement responsibilities.

Undue emphasis on voluntary compliance and failure to make sufficient use of available sanctions to enforce civil rights laws.

Failure to provide adequate coordination and direction to agencies having common civil rights responsibilities.

Failure to collect and utilize racial and ethnic data—in planning and evaluating progress toward goals.

Concentrating as it did on the mechanics of the Federal enforcement effort, the report did not attempt to measure the precise gains made by minority group members as a result of civil rights action by the Federal Government.

In its recommendations in specific subject areas the Commission suggested that in employment:

The Civil Service Commission should clarify its current policy, emphasizing specific goals in the Federal equal employment opportunity effort and develop a Governmentwide plan designed to achieve equitable minority group representation at all wage and grade levels within each department and agency.

The Office of Federal Contract Compliance (charged with the responsibility of insuring nondiscrimination on the part of the Government contractors) should extend its current program planning to develop a comprehensive equal employment opportunity plan, on an industry-by-industry basis, aimed at securing equitable representation of minority group members in all industries and at all job levels.

Congress should amend Title VII (governing discrimination in private employment) of the Civil Rights Act of 1964 to authorize the Equal Employment Opportunity Commission to issue cease and desist orders to eliminate discriminatory practices through administrative action.

The President should issue a reorganization plan transferring the contract compliance responsibilities of OFCC and the litigation responsibilities of the Department of Justice to the Equal Employment Opportunity Commission so that all responsibilities for equal employment opportunity will be lodged in a single independent agency.

Among the recommendations in the housing area were:

Congress should amend Title VIII of the 1968 Civil Rights Act (dealing with equal housing opportunity) to authorize the Department of Housing and Urban Development to issue cease and desist orders to eliminate discriminatory housing practices through administrative action.

The Department of Housing and Urban Development should strengthen its efforts as the leader of the entire Federal fair housing effort to assure that all other departments and agencies that have programs and activities relating to housing and urban development administer them so as to facilitate achievement of fair housing goals.

The Veterans Administration and the Federal Housing Administration should require federally aided builders to advertise housing and develop marketing policies and practices aimed at attracting minority group as well as majority group purchases.

To implement Title VIII's prohibition against discrimination in mortgage financing, the Federal agencies which supervise and benefit mortgage lending institutions (savings and loan associations, commercial banks, and mutual savings banks) should require these institutions to maintain racial and ethnic data on loan applications—those rejected as well as those approved—and develop instructions and procedures for examiners to enable them to detect patterns of discriminatory practices by these institutions.

Such agencies should develop procedures for the imposition of sanctions against insitutions in violation of Title VIII. These sanctions should include issuance of cease and desist orders and, in appropriate cases, termination of Federal insurance or charters.

Among the recommendations related to Federal programs were:

All agencies that administer programs subject to Title VI of the Civil Rights Act of 1964 (prohibiting discrimination in the administration of programs financed in whole or in part by Federal funds) should strengthen their compliance system by assuring that effective compliance activities are carried out. Their compliance activities should include, among other items, (a) sys-

tematic onsite review of recipients, (b) comprehensive guidelines for compliance reviews, and (c) pre-approval compliance reviews conducted by agencies that administer programs involving construction of facilities, such as public housing projects, recreational facilities, and highways, to assure that these facilities, through location and design, will serve minority group members on an equitable basis.

Agencies should place specific limits on time permitted for voluntary compliance and should make greater use of the sanction of fund termination.

Agencies that administer programs of insurance and guaranty should institute mechanisms to determine compliance with existing nondiscrimination requirements of lending institutions and other intermediaries between the Federal Government and borrowers.

Agencies which administer programs of direct Federal assistance should issue regulations and establish specific mechanisms to assure against racial and ethnic discrimination by Federal officials that operate these programs.

Among the regulations dealing with regulatory agencies were:

The Interstate Commerce Commission (ICC), the Civil Aeronautics Board (CAB), and the Federal Power Commission (FPC) should join the Federal Communications Commission (FCC) in issuing rules prohibiting employment discrimination by their licensees and in implementing such equal employment opportunity rules by the institution of appropriate mechanisms.

The FCC and the ICC should amend their procedures concerning issuances of licenses, which currently tend to protect the economic interests of existing licensees, in order to facilitate minority group entrance as entrepreneur and to permit them to compete for licenses on an equal basis with existing licensees.

To implement existing requirements of nondiscrimination in services and facilities by the industries they regulate, the FCC, the ICC, CAB and FPC should abandon reliance on complaint processing and establish affirmative compliance mechanisms.

The FTC should expand its efforts to protect the ghetto poor from unscrupulous businessmen and should work in close cooperation with local consumer groups, community action representatives, and other public and private groups concerned with alleviating the exploitation of the poor.

The Securities and Exchange Commission should amend its regulation prohibiting stockholders from raising questions involving "general, economic, political, racial, religious and social considerations" as a means of stimulating greater concern and activity by corporate enterprises in civil rights and related areas.

The U.S. Commission on Civil Rights is an independent, bipartisan, factfinding agency created by Congress in 1957. Rev. Theodore M. Hesburgh, C.S.C., President of the University of Notre Dame, is Chairman of the Commission.

ADDRESS BY DR. WILLIAM D. CARLSON, PRESIDENT, UNIVERSITY OF WYOMING

Mr. ALLOTT. Mr. President, my very good and respected friend, Dr. William D. Carlson, president of the University of Wyoming, has been good enough to provide me with a copy of the address he delivered at his institution's summer commencement.

President Carlson's words reflect the man's sober, enlightened refusal to be swept up by the pessimism and panic which so often afflicts the men charged with administering our great institutions of higher education.

So that all Senators may profit from President Carlson's thinking, I ask unanimous consent that his speech be printed in the RECORD.

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

WE ARE NO. 1

Many today believe that each of the Constitutional guarantees is a privilege granted to each of us by a generous country for our personal satisfaction, a means through which we may seek an individual state of well-being without regard for the rights, opinions, or well-being of others.

That isn't the idea. The concept of democracy is that people will be most likely to make the right choices if all opinions are heard and discussed. But in recent years we have been hearing more and more from only one side, from the minority trying to convince us that all we are and all we stand for is no good. These voices reached a crescendo last spring in many parts of the country.

This small group has been trying to convince everyone that our national system of education—the most comprehensive, the most sensitive to the needs of all that the world has ever known—is no good. As a result, American higher education—unsurpassed in quality in the world—has slipped from a position of high public esteem to a place of doubt and distrust in the minds of the people. This system, which has made America great, has not deteriorated. Only attitudes toward it have. Those same voices which attacked the system are now clamoring about defects in our society, seeking to sow the seeds of doubt that could grow into destruction. They are purposely overlooking the positive aspects of the society that offers unequaled privileges and opportunities, along with unequaled avenues for constructive change. If this small group is successful in its attempt to win the minds and attitudes of our young people, to convince them that this great country is no good, America will be no good.

I, for one, am fed up with those who are trying to destroy America. I hope you, too, have had enough. America is not perfect, it never will be. But it is still the best country on this globe. While honest and peaceful dissent is part of our heritage, we cannot sit by and allow the irrational attacks to continue. It's time for us to make our stand,—each student, faculty member, each graduate, each citizen—a national stand devoted to preservation and construction, not permissiveness and destruction. In terms of individual freedoms, depth of concern, and understanding for all segments of society, America is Number One. To change through force or violence is to sacrifice democracy, to settle on second-rate alternatives. The world is filled with countries governed under these alternatives. None of these alternatives is good enough for me. None is good enough for you.

ARMY OVERCHARGED ON DEFENSE CONTRACT

Mr. PROXMIRE. A recently completed investigation by the General Accounting Office, which I requested as chairman of the Subcommittee on Economy in Government, reveals that General Dynamics Corp. overcharged the Army millions of dollars on defense contracts awarded to it.

What is most disturbing about this case, in addition to the fact that public funds were used in a most inefficient and wasteful manner, is that the Army condones and is apparently encouraging the malpractices criticized in the report.

The contracts in question were awarded beginning in 1966 for the assembly of a number of radio teleptypewriter sets. But it entered into negotiated contracts on a sole source basis with General Dynamics despite the fact that other firms and one of the Army's own in-house facilities were available to do the work. In other words, the Army could easily have obtained competitive bids for the contracts or it could have awarded the work to an Army depot, and saved substantial sums of money.

The investigation conclusively shows that had competition been solicited or had the Army employed the Tobyhanna Army Depot, millions of dollars would have been saved.

Here are the facts:

Commencing in 1966, the Army entered into negotiations with General Dynamics for the assembly of 1,445 radio teletypewriter sets. The average price negotiated under the contracts was $12,592 for each unit.

But in 1966, the Tobyhanna Army Depot had offered to assemble the units for $8,000 each. Obviously, the Army's depot had offered to do the work for substantially less than General Dynamics. In fact, the potential savings should have been even more apparent in the light of General Dynamics' original estimated costs which went as high as $20,000 a unit. But even the $12,592 unit price actually agreed upon was considerably higher than the Tobyhanna offer.

The Army's explanation for turning down its own depot, which would have done the work for less money, is that it was inconsistent with the Army's general policy that the Government not compete with industry. However, there is another policy, incorporated in a circular issued by the Bureau of the Budget—Budget Circular No. A–76 dated March 3, 1966. The circular states that the Government may do work in-house where substantial savings will result. The policy, which is supposed to encourage the efficient use of the Government's own facilities, was completely violated by the Army's decision to give General Dynamics the contracts.

In addition, several companies were available and equally competent to do the work required. For example, Ling-Temco-Vought, Inc., made a proposal to supply the radio teletypewriter sets as early as 1965—almost a year before the first contract in question was awarded. The Bendix Corp., Radio Corp. of America, and AVCO Corp. had also expressed interest in bidding on the systems.

All of these companies were qualified to do the work. All of them were known by the Army to be qualified. But all of them were ignored, and the Army simply sat down with General Dynamics and gave it the exclusive privilege of negotiating a contract.

The proof of the fact that the price entered into with General Dynamics was excessive and far higher than the price that could have been obtained had the Army solicited competition came in 1968 when competition was solicited for a new follow-on contract.

In 1968 the Army solicited bids for the first time for assembling the identical radio teletypewriter sets. The solicitation was by formal advertisement. The lowest unit price submitted for this contract was $3,410. Thus, competition succeeded in reducing the price by about two-thirds.

Further, the competitive contract was for the assembly of only 706 units, compared with the 1,445 units that were awarded through sole source negotiation, bringing into even sharper contrast the savings that could have been obtained had there been competition for the larger quantity. Although the final price of the larger quantity is expected to be reduced somewhat, it will still be far above the competitive price.

The puzzling aspect of this case is that the low bidder in 1968 was General Dynamics, the same firm that had estimated only a couple of years earlier that the costs might be as high as $20,000 a unit.

How is it that General Dynamics could have estimated a unit cost of $20,000 each, have entered into a contract for $12,592 in 1966, and then, at the first sign of competition, drop its price to $3,410 each and presumably still make a fair profit?

The conclusion that General Dynamics inflated its estimates in the first instance and succeeded in overcharging the Government is, in my judgment, inescapable.

The General Accounting Office reported to me that an estimated $8.8 million were spent because of the higher negotiated price, and that a good portion of this amount might have been saved had there been competition.

I read the first of GAO's conclusions:

> The Electronics Command did not obtain competition in awarding contracts for the assembly of 1,445 radio communication systems, although there were several qualified sources, there was a suitable procurement package, and, in our opinion, there was sufficient time (December 1965 to June 1966) for competitive negotiations. The procurements on a sole-source basis were made at an average target unit price of $12,592, before a reduction due to a cost underrun. It now appears that the redetermined price may be about $10,200 a unit, or about $6,100 greater than a unit price subsequently obtained on an advertised procurement. The $6,100 multiplied by 1,445 units is about $8.8 million. We believe that, had the 1,445 units been purchased on a competitive basis, a good portion of the estimated $8.8 million might have been saved.

Earlier I referred to the role played by the Army. It is a most disturbing performance.

As I explained, it intentionally ignored its own Army depot which had offered to do the work for far less money than General Dynamics, and it intentionally ignored the availability of competing firms. These acts on the part of the Army have cost the taxpayer dearly.

It is interesting to examine the technical gyrations that the Army had to resort to in order to justify the sole source negotiations with General Dynamics.

Under the law, the Pentagon is required to utilize competition and to formally advertise for bids on defense contracts. There are, however, a number of loopholes in that law and they have become frayed and almost worn out because of constant use. Indeed, with competition down to around 11 percent of the total dollar amount of defense contracts awarded each year, there is now more loophole than there is law on the subject of defense contract awards.

One of the most popular loopholes in Pentagon circles is the "public exigency" exception to formal advertising.

Under this exception, a contracting officer may determine that because of some "public exigency," some urgent reason for early delivery, or the unavailability of more than one source with the desired capability, the formal advertising provisions can and should be disregarded. In the present case, contracting officers used this loophole on three separate occasions. It was used on the justification that high priority deliveries were necessary, and it was used on the justification that General Dynamics was the only contractor with the known capability to meet the required delivery schedule.

But, as the General Accounting Office points out in its report, the uses of this exception were not justified. In the first place, even if negotiation rather than competition were warranted under the circumstances, there was no justification for negotiating on a sole source basis with only one firm. There were other firms, as I explained earlier, and negotiations could have been entered into with one or more of those firms. Moreover, the GAO concluded that there was sufficient time to obtain competition.

Second, not only was the Tobyhanna Army Depot qualified to do the work, not only had they offered to do the work for less money than General Dynamics, but they had also offered to deliver the finished product at an earlier time than that of General Dynamics.

Let me read the second conclusion of the General Accounting Office:

> The contracting officer on three occasions, over a period of about 11 months, made determinations to justify the emergency procurements from the same sole source. We believe that other producers should have been solicited to compete for the procurements awarded during the period June 1966 to June 1968 or reasonable efforts, appropriately documented, should have been made to determine whether other sources could deliver in time.

In my judgment, this case exemplifies the flagrantly loose and negligent manner in which military procurement is conducted. It also provides evidence that the Army is actively discouraging competition as well as its own in-house capability.

Both the Johnson and the Nixon administrations look bad on this one. Although the contracts were awarded from 1966 to 1968, the Defense Department to this day defends the circumstances surrounding them. It refuses to acknowledge that competition could and should have been solicited. It denies that there were any overcharges involved. It is apparently satisfied with the procedures that were employed.

I find this most lamentable. As I have stated on many occasions, inefficiency and waste in military procurement is a bipartisan problem, and it is unfortunate and unsatisfactory that the current administration seems no more willing to correct abuses in military-procurement than its predecessors.

I ask unanimous consent to have printed in the RECORD the report of the Comptroller General of the United States dated October 6, 1970.

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

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Economy in Government, Joint Economic Committee, Congress of the United States.

DEAR MR. CHAIRMAN: This is our report on sole-source contract awards by the Army Electronics Command to General Dynamics Corporation's Electronics Division for assembly of radio communication systems, AN/GRC–142. The review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being furnished to the Secretary of Defense; the Secretary of the Army; the President, General Dynamics Corporation; the Headquarters Office, Defense Contract Audit Agency; and the Regional Director, Boston Region, Defense Contract Audit Agency. We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

SOLE-SOURCE CONTRACT AWARDS FOR ASSEMBLY OF RADIO COMMUNICATION SYSTEMS, AN/GRC–142

(Report to the Subcommittee on Economy in Government, Joint Economic Committee, Congress of the United States)

[Page and figure references referred to in the report are not RECORD pages.]

DIGEST

Why the review was made

On April 18, 1969, the General Accounting Office (GAO) reported to the Subcommittee on Economy in Government, Joint Economic Committee, on the procurement of radio communications (teletypewriter) systems by the Army in June 1968. GAO promised to examine earlier contracts for the assembly of the systems, awarded on a sole-source basis, and to evaluate the Army's decision not to seek competition.

Findings and conclusions

The U.S. Army Electronics Command made the sole-source awards to the General Dynamics Corporation's Electronics Division during the period June 1966 to June 1968.

GAO found that:

The Electronics Command had awarded two noncompetitive contracts for assembly of 1,445 radio communication systems at a tentative price of about $18 million, subject to redetermination at completion, although there were several qualified sources, there was a procurement package suitable for competitive negotiations, and, in GAO's opinion, there was sufficient time to solicit competition. (See p. 7.)

The price may be redetermined at about $10,200 a unit, or about $6,100 greater than a unit price subsequently obtained on an advertised procurement. The $6,100 multiplied by 1,445 units is about $8.8 million. Had the 1,445 units been purchased on a competitive basis, a good portion of the estimated $8.8 million might have been saved. (See p. 8.)

Production drawings for formal advertising were not available before the first sole-source award. However, a fully tested procurement model was available for qualified producers to inspect for competitive bidding on a negotiated basis. (See p. 8.)

Other capable companies, one of which had been approved as the planned emergency producer, were not requested to bid. (See p. 9.)

The contracting officer justified separate sole-source procurements three times in 11 months under the public exigency exception to formal advertising on the basis that General Dynamics was the only contractor that could meet delivery requirements. (See p. 11.)

GAO believes that other companies should have been solicited to compete for the procurements during the period June 1966 to June 1968 and that reasonable efforts should have been made to determine whether any of them could deliver on time.

One way to stimulate competition is to keep all potential contractors—especially the planned emergency producer—informed about the progress the Government is making in the development of a system to facilitate prompt responses to solicitations. Keeping one contractor informed to the exclusion of others gives that contractor an undue advantage and stifles competition. Also, the Government becomes locked in to the contractor that was favored with the information and a sole-source procurement at increased costs can result.

Recommendations or suggestions

GAO proposed in a draft of this report that the Secretary of Defense ensure that procurements are made on a competitive basis when—

There are several qualified sources,

There is a procurement package suitable for competitive negotiations, and

There is sufficient time for competition.

Agency actions and unresolved issues

The Deputy Assistant Secretary of Defense (Installations and Logistics) concurred in the proposal but, because of the urgent requirements that existed, believes that this was not a situation where competitive procurement could have been made earlier than 1968.

GAO believes, however, that, if urgency was the overriding reason, the sets could have been assembled by a depot which proposed an earlier delivery date than the one by General Dynamics. (See p. 17.) Otherwise, GAO believes that the systems could have been purchased by competitive negotiation. It seems reasonable to GAO that, since the latest experimental models were designed and constructed in-house at the Electronics Command, more than one potential contractor could have been kept informed of the in house technical developments. (See p. 19.) In GAO's opinion the familiarized contractors may have been able to compete on a timely basis in terms of delivery as well as price. (See p. 18.)

CHAPTER 1—INTRODUCTION

The General Accounting Office has reviewed contracts awarded on a sole-source basis to the General Dynamics Corporation's Electronics Division during the period June 1966 to June 1968 by the U.S. Army Electronics Command for the assembly of radio communication systems identified as radio teletypewriter sets, AN/GRC–142. The purpose of the review was to examine into the circumstances under which these contracts were awarded on a sole-source basis and to determine whether these procurements could have been made competitively. This review is an expansion of a review on which we previously reported to Senator William Proxmire, Chairman, Subcommittee on Economy in Government, Joint Economic Committee, in April 1969, in response to his request for a review of procurements of the systems in June 1968. The scope of our review appears on page 22.

The Electronics Command, a subordinate command of the Army Materiel Command, is responsible for research, design, development, test, and supply management of electronic equipment.

The AN/GRC–142 set is a tactical, single sideband radio communication system assembled in a shelter and mounted on a ¾-ton truck for transport. (See pp. 5 and 6.) It has the capability either to transmit or receive teletype messages.

The contractor was required under production (assembly) contracts to prepare the interiors of shelters and to assemble in the shelter the major communication components. The shelter and such components were Government-furnished. This preparation generally consists of installing brackets, shelves, electrical wiring, and related components. (See pp. 5 and 6 and apps. I and II.)

In 1963 a contract for the assembly of one experimental model was awarded to General Dynamics at a price of $99,806. After the military potential of this model was tested, changes were found necessary. The Army decided in December 1963 to authorize Electronics Command laboratories to design and construct two engineering development models under an in-house project.

During the period January through July 1965, a third engineering development model was designed and constructed in-house. By November 1965 the Army Materiel Command had determined that a competitive procurement package was available, and it was planning a competitive procurement of the system. A quantity of 280 units was to be purchased in fiscal year 1966, and a quantity of 1,520 units was to be purchased in fiscal years 1967 and 1968. The Army Materiel Command approved the system as a Standard A item in December 1965. Standard A designates a preferred, fully effective, and acceptable item which may be procured in accordance with approved procurement programs. This third engineering model was designated as the official procurement model.

CHAPTER 2. COMPETITION NOT OBTAINED

The Electronics Command awarded two contracts to General Dynamics on a sole-source basis for the assembly of 1,445 radio communication systems during the period June 1966 through June 1968 although there were other qualified sources, there was a procurement package suitable for competitive negotiations, and, in our opinion, there was sufficient time to solicit competition. Procurements under these contracts were made at various dates at prices ranging from $8,400 to $17,064 a unit. (See app. III.) The average price amounted to $12,592 a unit. This is a target price and is subject to final negotiation at completion on the basis of contract cost of performance, and the contractor is to share to the extent of 30 percent in any cost underrun and 15 percent in any cost overrun.

After competition was introduced by means of an advertised procurement in June 1968, the unit price for assembling 706 units was reduced to $3,410 by General Dynamics, the low bidder. The price of the next lowest bidder was $3,985. Prices of five other bidders ranged from $4,248 to $6,920.

The negotiated contract target unit prices included (1) packaging costs and (2) costs of equipment which, under the advertised contract, were provided by the Government. To put both the negotiated and advertised prices on a comparable basis, the cost of these two items is added in the following tabulation (as estimated by General Dynamics) to the unit price of the advertised contract.

Unit price on the advertised contract	$3,410
Equipment furnished by the Government under the advertised contract but furnished by the contractor under the negotiated contracts	415
Packaging priced separately on the advertised but not on the negotiated contracts	229
Total	4,054

Although the target prices are still to be finally negotiated, we subtracted the Government's share of a cost underrun, discussed on page 12, to arrive at an estimated average unit price of $10,169, which price is $6,115 greater than the above $4,054 unit price. The $6,115 multiplied by 1,445 units is $8,836,175, a good portion of which, we believe, might have been saved had competitive negotiation been introduced prior to June 1966.

The difference in the prices which currently exists is consistent with our experience which has shown that lower prices are usually obtained with the introduction of competition. Although production drawings for formal advertising were not available prior to the first sole-source award, a fully tested procurement model was available for inspection by capable producers desiring to compete on a negotiated basis.

Availability of procurement package, other sources, and time to negotiate

On February 11, 1966, the Electronics Command approved the procurement of the system by competitive negotiation utilizing a procurement package consisting of (1) a tested procurement model to be displayed for inspection by prospective bidders and then loaned to the successful bidder as a model for assembly, (2) performance specifications, (3) specifications changes to be the model, and (4) a procurement parts list.

At this time the Electronics Command was in possession of an unsolicited proposal from Ling-Temco-Vought, Inc., submitted in August 1965 after that company had learned of an urgent need for the systems. The company offered to supply interim sets under four different alternatives approaches, including one predicated on having all equipment furnished by the Government. In May 1966 the Command rejected the unsolicited proposal with an explanation that:

"The current procurement and production for Radio Teletypewriter Set AN/GRC–142 are not compatible with the introduction of a new producer at this time."

Ling-Temco-Vought was not invited to revise its August proposal in the light of the procurement model designated as official in December 1965 nor was a proposal solicited from the company on the basis of the procurement package after it became available.

Bendix Radio Division of Bendix Corporation became the approved planned emergency producer for the radio teletypewriter set on March 24, 1966. Bendix had also been the planned emergency producer for a predecessor set. Bendix, however, was not solicited for the procurement of the systems. Electronics Command records showed that Radio Corporation of America and AVCO Corporation had also expressed interest in bidding on the systems. Although all of these are qualified companies, they were not solicited.

In the subsequent period up to the award of the first production contract to General Dynamics in June 1966, consideration was given to procuring the assembly of the systems from the Tobyhanna Army Depot. Although it was believed that neither the depot nor commercial sources could complete delivery by June 30, 1967, of the initial requirement which had been increased to 445 units, the project manager felt that assembly by the depot would result in a slippage of 3 months beyond this date compared to a slippage of 9 months or longer if a contract were let to industry. Also, Tobyhanna had offered to assemble the systems for $8,000 a unit which, compared to General Dynamics' quotation of $18,000 to $20,000 a unit, indicated a potential saving of about $4.5 million.

On May 4, 1966, the Army Materiel Command disapproved the proposed assembly by the depot on the basis that it was inconsistent with the Army's general policy that the Government not compete with industry. If the Command's interpretation of the Army's policy is correct, that policy appears to be contrary to the provisions of Bureau of the Budget Circular No. A–76 dated March 3, 1966, which provides that the Government may do the work in-house where substantial savings will result. We believe that the Army should have given consideration to procuring the equipment from the Tobyhanna Depot as well as from other qualified sources.

Army Materiel Command officials on May 31, 1966, directed that the Electronics Command proceed with a sole-source letter contract award to General Dynamics by the end of June 1966. Prior to the award of the contract, it was found that only 280 units could be funded in fiscal year 1966. These additional considerations by the Electronics Command, the project manager, and the Army Materiel Command during the period March to May 1966 delayed the placing of the first contract for the systems.

Sole-Source Procurements

The sole-source award for the first contract was justified under authority of section 2304(a)(2) of Title 10, United States Code—the public exigency exception to formal advertising—by the contracting officer on the basis of a number of reasons, two of which were:

The systems were required for high-priority deliveries from February through May 1967.

General Dynamics, the current and past producer of several major components, was the only contractor with known capability to closely meet the required delivery schedule.

Letter contract DA–36–039–AMC–10418(E) was awarded on June 29, 1966, for services and materials to assemble 293 units including 13 added for the Military Assistance Program. The contract was definitized on a fixed-price-incentive basis on March 31, 1967, at a tentative unit price of $17,064, totaling about $5 million. (See app. III.) The contract provided that production drawings be furnished by General Dynamics at a cost of $148,000. The company drafted the drawings by physical examination and measurement of the official procurement model. The final set of production drawings was delivered in November 1967.

The Electronics Command determined that a second contract was necessary to satisfy an additional urgent requirement for 325 units. On October 28, 1966, the contracting officer determined that public exigency would not permit the delay in delivery incident to advertising and justified the sole-source procurement because General Dynamics was still considered to be the only contractor that could meet the delivery requirements for this urgently needed item. On December 9, 1966, 325 units were purchased on a sole-source basis by a modification to letter contract DAAB05–67–C–0137.

The contracting officer, on May 10, 1967, made still another determination that public exigency justified the procurement of an additional 769 units from the same sole source. This quantity was added to the second contract by another modification. A target unit price of $11,530 was established for the assembly of 1,094 units when contract –0137 was definitized on June 24, 1967, on a fixed-price-incentive basis. With the procurement of other smaller quantities of 30 and 28 units, an aggregate quantity of 1,152 units at a total target price of about $13 million (see app. III) had been purchased on a sole-source basis under the second contract.

According to General Dynamics, it experienced a cost underrun of about $5 million as of May 23, 1969, on the two fixed-price-incentive contracts.[1] Under the incentive provisions of the contracts, both the company and the Government will share in the underrun; the contractor's share of 30 percent will be about $1.5 million, and the Government's 70 percent share will be about $3.5 million. We were unable to estimate what the final negotiated unit price would be because, in addition to the 1,445 units, the two contracts included such other line items as mountings and repair parts to which the cost underrun had not yet been allocated.

The Defense Contract Audit Agency advised us that, after General Dynamics' anticipated submission of final price proposals for both contracts, final prices would be negotiated. As of June 8, 1970, General Dynamics had not submitted such final proposals.

Advertised contract

On December 14, 1967, the Electronics Command determined that a sufficient procurement package was available for procurement on an advertised basis. This determination was made after General Dynamics delivered the production drawings.

On May 3, 1968, the Command issued an invitation for bid to 37 contractors for a quantity of 1,186 units. The invitation required that contractors submit bids based on a competitive procurement package consisting of Government specifications, production drawings, and a procurement model. Seven bids were received. The Command awarded a multiyear contract, DAABO5–68–C–0035, on June 24, 1968, to General Dynamics on the basis of the lowest responsive bid of $3,410 a system. The prices of the other bidders were $3,985, $4,248, $5,012, $5,294, $6,025, and $6,920.

This contract provided for the systems to be ordered through fiscal year 1971. As of September 15, 1969, a total quantity of 706 had been ordered at a cost of $2,407,460. (See app. III.)

CHAPTER 3. CONTRACTOR AND AGENCY COMMENTS AND OUR EVALUATION

In its comments on our draft report, General Dynamics stated that its records indicated that a suitable procurement package consisting of drawings, specifications, and equipment lists was not available until November 1967. (See app. V.) We believe that the contractor has reference to the procurement package suitable for procurement on an advertised basis since Army records indicate that a procurement package suitable for competitive negotiations was available in November 1965.

General Dynamics stated also that, if its contract prices were plotted on an improvement curve, there appeared to be little basis to assume that substantial savings could have been achieved if the earlier contract quantities had been purchased under different methods. It seems reasonable to expect some cost reductions and, in turn, reductions in price as experience is gained in performing the work and after the early startup and tooling costs have been recovered.

It is difficult to realistically measure the degree of improvement by General Dynamics in the light of the initial, sole-source target price of $17,064, compared with Tobyhanna's proposed price of $8,000. The measure of improvement after 2 years of experience is particularly questionable in view of the second low bid of $3,985 by a contractor without experience in producing the teletypewriters. General Dynamics' low bid of $3,410 and the other bids give some indication of what companies might have bid if they had been solicited earlier and further confirms our experience that lower prices are usually obtained after the introduction of competition. We believe that, if the forces of competition had been applied when the earlier procurements were made, substantial savings could have been realized.

In our draft report we proposed that the Secretary of Defense ensure that procurements are made on a competitive basis when there are several qualified sources, there is a procurement package suitable for competitive negotiations, and there is sufficient time for competition. The Deputy Assistant Secretary of Defense (Installations and Logistics) concurred in our proposal. He indicated that it is the policy of the Department of Defense, as well as a statutory requirement, that the maximum practicable competition be obtained in the procurement of defense supplies and services. He stated, however, that, considering the urgency of the requirements, the Department could not agree in this instance that price competition for production could have been introduced earlier than it actually was. (See app. IV.)

Following is our evaluation of his comments.

Competition prior to 1968

The Deputy Assistant Secretary of Defense stated that competitive procurement could not have been made earlier than 1968.

Upon an Army determination in November 1965 that a competitive procurement package was available, it seems appropriate that not only General Dynamics but other interested sources should have been given an opportunity to familiarize themselves with the procurement package. Also, we believe that the Army should have disclosed to all potential suppliers that a quantity of 280 units was to be purchased in fiscal year 1966 and 1,520 units was to be purchased in fiscal years 1967 and 1968.

Even though the Army Materiel Command did not decide until May 31, 1966, to designate General Dynamics as the sole source for the assembly of 293 units, talks were held prior to March 24, 1966, with General Dynamics with a view toward a sole-source contract. Although a competitive procurement package was available, we found no evidence in the agency files that talks based on this package were held at any point in time prior to May 31, 1966, with other sources including the only planned emergency producer at that time.

Bendix Radio Division of Bendix Corporation had been the planned emergency producer for the radio teletypewriter set which preceded the AN/GRC–142 set. As of March 24, 1966, Bendix became the only approved planned emergency producer for the AN/GRC–142. Later, General Dynamics was similarly approved as of September 15, 1966. The Armed Services Procurement Regulation provides that, in the procurement of items for which there are planned emergency producers, such producers be solicited.

We believe that one of the ways to stimulate competition would be to keep all potential contractors informed about the progress the Government is making in the development of a system, especially the planned emergency producer. This facilitates a prompt response to solicitations. Keeping one contractor informed to the exclusion of others, gives that contractor an undue advantage and stifles competition. Also, the Government becomes locked in to the contractor that was favored with the information and a sole-source procurement at increased costs could result.

Urgent requirements

The Deputy Assistant Secretary of Defense stated that procurement of the equipment from General Dynamics offered the best possibility of meeting the urgent requirements, that other potential sources for this equipment would have required extensive lead time to acquire special tooling and test equipment, that a new producer would have been required to satisfy first article testing, and that competitive solicitation would have required 5 to 7 months for the award of the production contract and 15 to 18 months for initial delivery.

[1] On April 8, 1970, in commenting on our draft report (see app. V), General Dynamics said that it was anticipated that final prices would be less than target prices but did not indicate the extent of the cost underrun.

The justification for negotiation, rather than formal advertising, was made by the contracting officer under authority of 10 U.S.C. 2304(a)(2), the public exigency exception to formal advertising. As a part of his justification for the first assembly contract, the contracting officer stated that the items were required under Priority 02 (a high priority) for deliveries in February 1967 through May 1967, under the Department of the Army Accelerated Program.

A valid justification for negotiation, however, is not a justification for a procurement on a sole-source basis. According to the Armed Services Procurement Regulation, when negotiating under the cited authority, competition to the maximum extent practicable, within the time allowed, shall be obtained. We believe that the time from December 1965 to June 1966 was sufficient to obtain competition for the radio teletypewriter sets in question.

On April 6, 1966, the Tobyhanna Army Depot was requested to quote on the assembly of the systems. The next day, the depot engineers inspected the procurement model and furnished an estimate. The depot indicated a delivery date earlier than that of General Dynamics. It appears that, in view of the availability of the fully tested model and performance specification along with major components to be Government-furnished, the time needed to prepare a quotation for the assembly of the units was not too extensive.

With respect to special tooling, test equipment, and first-article testing, a qualified producer normally takes matters of this type into account in preparing its proposal. Proposed delivery schedules of the competing producers could have been evaluated in the light of the urgent need. The contract awarded to General Dynamics in June 1966 had a requirement for special tooling, test equipment, and for testing first-article samples. Thus, General Dynamics was in essentially the same position as the other contractors regarding lead time needed to acquire special tooling and the requirement for first-article acceptance.

Whether any of its competitors could have met or beaten the delivery schedule proposed by General Dynamics is a matter which could have been realistically determined by a solicitation of the interested qualified sources.

We believe that competition could have been obtained in terms of price and delivery well in advance of the letter contract award date of June 29, 1966. Besides the emergency planned producer, other interested producers, such as Ling-Temco-Vought, Inc., Radio Corporation of America, and AVCO Corporation, should have been solicited for price and delivery dates.

Tempest capability

The Deputy Assistant Secretary of Defense stated that General Dynamics possessed the facilities and experience to meet certain stringent tempest capability. He said that this capability involved an electrical design which prevented the loss of classified information through inadvertent emanations.

We found no evidence in the agency files that the Army attempted to determine whether Bendix, Radio Corporation of America, or AVCO Corporation had tempest capability. However, Ling-Temco-Vought, Inc., did make known to the Army its "appropriate clearances tempest testing capability and availability of personnel and facilities."

Before the award of the first assembly contract, the Army and General Dynamics discussed certain requirements of the tempest testing which could not be met because of certain Government-furnished components. It was agreed that General Dynamics could not be held responsible for shortcomings in such components. Later, an agreement was reached whereby meeting the tempest test requirements was made a design objective in order to relieve the contractor of the responsibility for having the Government-furnished components pass the tests. A clause in the contract was then so worded.

We believe that the Army should have considered the tempest testing capability of the other interested firms before making a sole-source award to General Dynamics.

Engineering development models designed and constructed in-house

The Deputy Assistant Secretary of Defense stated that General Dynamics was the developer of the initial experimental model.

We recognize that General Dynamics did deliver the first experimental model in July 1963. However, after testing this model, the Army decided in 1963 to design and construct two engineering development models under an in-house project. Even these two in-house models did not meet service test requirements and they were rejected. A third in-house model was then designed, constructed, tested, and finally approved as a Standard A item in December 1965.

Also, prior to December 1965 the Electronics Command prepared and provided technical manuals, operator check lists, system schematic diagrams, and operator training at Fort Bragg, North Carolina, for the radio communication system.

It is to be noted that, after General Dynamics delivered the first model, considerable time and effort was devoted in-house by the Army to engineer and develop three additional models during a lapse of about 2 years. It appears that a physical and operational capability comparison of the first model with the fourth model would reveal a substantial difference from a technical point of view.

We believe, therefore, that the Government, in engineering and developing three models after General Dynamics had completed its own model, acquired a knowledge and capability that should have been more advanced than that of General Dynamics. In view of this advanced know-how and the fact that General Dynamics apparently did not assert any proprietary rights in any of the four models, we do not believe that the Government had to rely on General Dynamics as a sole source for the assembly contracts.

CHAPTER 4. CONCLUSION

The Electronics Command did not obtain competition in awarding contracts for the assembly of 1,445 radio communication systems, although there were several qualified sources, there was a suitable procurement package, and, in our opinion, there was sufficient time (December 1965 to June 1966) for competitive negotiations. The procurements on a sole-source basis were made at an average target unit price of $12,592, before a reduction due to a cost underrun. It now appears that the redetermined price may be about $10,200 a unit, or about $6,100 greater than a unit price subsequently obtained on an advertised procurement. The $6,100 multiplied by 1,445 units is about $8.8 million. We believe that, had the 1,445 units been purchased on a competitive basis, a good portion of the estimated $8.8 million might have been saved.

The contracting officer on three occasions, over a period of about 11 months, made determinations to justify the emergency procurements from the same sole source. We believe that other producers should have been solicited to compete for the procurements awarded during the period June 1966 to June 1968 or reasonable efforts, appropriately documented, should have been made to determine whether other sources could deliver in time.

CHAPTER 5. SCOPE OF REVIEW

Our review included an examination of the records and events relating to the development, tests, and procurements of AN/GRC-142 radio teletypewriter sets by the Army since August 1960. Our examination was made at the offices of the Project Manager and the Electronics Command, both located at Fort Monmouth, New Jersey, and at Electronics Command's branch, Philadelphia, Pennsylvania. Also, we obtained information from officials at Headquarters, Army Materiel Command, and the Tobyhanna Army Depot, Tobyhanna, Pennsylvania.

We discussed various aspects of the contracts with the Director of Communications, Avionics Products, and with other officials at the offices of General Dynamics, Rochester, New York. We also held a discussion regarding Ling-Temco-Vought's unsolicited proposal with the company's officials at their branch office, West Long Beach, New Jersey. We further discussed the administration of the contracts at the Defense Contract Administration Services District, Rochester, New York.

APPENDIX III—U.S. ARMY ELECTRONICS COMMAND

PROCUREMENTS OF RADIO TELETYPEWRITER SET AN/GRC-142 FROM GENERAL DYNAMICS CORP'S. ELECTRONICS DIVISION FROM JUNE 1966 THROUGH SEPT. 15 1969

Contract Number	Type	Date	Total quantity	Unit price	Total price
DA-36-039-AMC-10418(E):					
Letter contract		June 29, 1966	293		
Definitized	[1] FPI	Mar. 31, 1967	293	[2] $17,064	$4,999,752
DAABO5-67-C-0137:					
Letter contract		Nov. 30, 1966			
Model No. 1		Dec. 9, 1966	325		
Model No. 3		May 19, 1967	769		
Definitized	[1] FPI	June 24, 1967	1,094		
Model No. 3		Aug. 31, 1967	30		
Subtotal			1,124	[2] 11,530	12,959,720
Letter contract		June 24, 1968	28		
Definitized, Model No. 15	[1] FPI	Nov. 21, 1968		[2] 8,400	235,200
Total of sole-source procurements			1,152		13,194,920
			1,445	[3] 12,592	18,194,672
DAABO5-68-C-0035 [4]	[5] FFP advertised multi-year.	June 24, 1968	226	3,410	770,660
Model No. 3		Sept. 15, 1969	480	3,410	1,636,800
Total of advertised procurements			706		2,407,460

[1] FPI—fixed price incentive.
[2] Negotiated target prices are subject to revision at completion of contracts.
[3] This is the average target unit price for 1,445 units.
[4] Additional 480 to be procured in fiscal year 1971.
[5] FFP—firm fixed price.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., April 14, 1970.

Mr. C. M. BAILEY,
Director, Defense Division,
U.S. General Accounting Office,
Washington, D.C.

DEAR MR. BAILEY: This is in response to GAO draft report of March 6, 1970, titled, "Sole-Source Contract Awards for Assembly of Radio Communication Systems AN/GRS–142" (OSD Case #3092). The draft report concludes that the U.S. Army Electronics Command did not obtain competition in awarding contracts for the assembly of 1,445 radio communication systems, although, according to GAO, several qualified sources, a suitable procurement package, and sufficient time for competitive negotiations were available. Based on a comparison of prices for these 1,445 units with prices resulting from an advertised procurement in June 1968, the report reflects a savings would have occurred if competitive negotiation had been introduced prior to June 1966. The report recommends competitive procurement when there are several qualified sources, a procurement package suitable for competitive negotiations, and sufficient time for competition.

We concur with the recommendation as it is our policy, as well as a statutory requirement, that the maximum practicable competition be obtained in the procurement of Defense supplies and services. However, following our review of the circumstances of the procurement actions involved in the draft report, we cannot concur that price competition for production could have been introduced earlier than it actually was employed.

The Army has advised that the initial procurements were made to satisfy urgent Southeast Asia requirements under an accelerated supply program to modernize the field Army. Absent the requirement for urgent delivery and given sufficient time, another qualified producer could probably have furnished acceptable equipment.

Procurement of the equipment from General Dynamics offered the best possibility of meeting the urgent requirements. General Dynamics was the developer of the initial experimental model, the developer of related type equipment, and it possessed the facilities and experience to meet certain stringent tempest capability. This capability involves an electrical design which prevents the loss of classified information through inadvertent emanations, such as Electro-Magnetic radiation.

It is the experienced judgment of Army representatives that other potential sources for this equipment would have required extensive leadtime to acquire special tooling and test equipment and a new producer would have been required to satisfy first article testing. In the judgment of the Army Electronics Command, competitive solicitation would have required five to seven months for award of the production contract and 15 to 18 months for initial delivery. Because of the urgency for the item, two letter order contracts were issued. The first contract was awarded within one month after the Army rejected an alternative plan which was being considered to assemble the system in-house at the Tobyhanna Army Depot. The second letter contract was awarded five months later.

Delivery under the first contract commenced in April 1967 in accordance with the original delivery schedule and was completed in October 1967. Delivery under the second contract commenced in September 1967, a two-month slippage from the original delivery schedule, and was completed in November 1968. Had competitive procurement been considered at the time the first letter contract was awarded, initial deliveries would have commenced about one year later—based on the U.S. Army Electronics Command's estimate of time needed for competitive procurement.

It is difficult to look back three to four years in retrospect and evaluate the subjective judgments that the Command had to make. Urgent requirements of field forces necessitated the placement of contracts with the source offering the optimum probability of early delivery of a quality item. This source was General Dynamics, the sole source developer of the experimental model. Though we concur with your recommendation, we do not believe this case represents a situation where competitive procurement could have been made earlier than 1968, after which, as you know, follow-on procurements were awarded following formal advertising.

We appreciate the opportunity to provide these comments on your draft report.

Sincerely,

GLENN V. GIBSON,
Deputy Assistant Secretary of Defense.

GENERAL DYNAMICS
ELECTRONICS DIVISION,
Rochester, N.Y., April 8, 1970.

Mr. C. M. BAILEY,
Director, Defense Division, U.S. General Accounting Office, Washington, D.C.

DEAR MR. BAILEY: We wish to thank you for the opportunity extended to comment on the draft report to Senator Proxmire relative to sole-source contract awards for assembly of radio communications systems, AN/GRC–142. Mr. Roger Lewis has referred your letter and draft report to me for response in my capacity as General Manager of the Electronics Division of General Dynamics. There are several comments which I feel you should consider prior to finalizing the report. In the draft report you state that two sole-source contracts for assembly of 1445 AN/GRC–142 systems were awarded even though there were several qualified sources, a procurement package suitable for competitive negotiations and sufficient time for competition.

Our records indicate that a suitable procurement package consisting of drawings, specifications, and equipment lists was not available until November 1967, and that the formulation of this procurement package was an identified line item task under the initial AN/GRC–142, Contract No. DA–36–039–AMC–10418(E).

Our records further indicate that the second contract for the assembly of AN/GRC–142 Radio Communications Systems was negotiated and entered into as of 9 December 1966 and modified on 24 June 1967 to add additional quantities making an aggregate quantity of 1152 under the contract. This contract called for initial delivery within eight months, a lead time which we feel could not be achieved unless a supplier had either an existing production line or a complete procurement package; and in the latter case, it is highly uncertain as to whether production could be started up in time to meet the delivery requirement.

In attempting to evaluate the time element for obtaining adequate competition and contract performance, we reviewed the record of the first procurement which utilized the procurement package and for which competition was obtained. This procurement allowed prospective suppliers 25 days for preparation of proposals. The contract was awarded on 24 June 1968, 27 days thereafter, and 14 months were allowed from award of contract until delivery of the first production unit. I think, therefore, that you should carefully consider whether or not another qualified firm, utilizing only the procurement model of the AN/GRC–142 Radio Communications System from which to prepare engineering drawings suitable for production, could have met the delivery requirement of eight months.

You further noted in the draft report that approximately $13 million in price savings is indicated when the average unit price of all units procured under the two sole-source contracts is compared to the units procured on an advertised basis. Here again I feel that certain facts should be carefully considered prior to finalizing your report.

The total price for Contract No. DA–36–039–AMC–10418(E) includes work of a non-recurring or non-similar nature to Contract No. DAAB–05–68–C–0035 of the following types: Design, Development, Integration, Layouts, and Special Tooling. Further, ME 165 Meters and TT 523 Signal Drives were GFE on Contract DAAB–05–68–C–0035, and contractor furnished on Contracts DA–36–039–AMC–10418(E) and DA–36–039–AMC–0137(E). These latter contracts also included packaging costs which are shown separately under Contract DAAB–05–68–C–0035. Following is a tabulation of the appropriate line items from the three contracts involved with an adjustment for contractor furnished items and for packaging prices:

Contract No.	Item No.	Quantity	Contract unit price	GFE adjustment	Package adjustment	Contract adjustment unit price
DA–36–039–AMC–10418(E)	1	293	$17,064	Incl	Incl	$17,064
DA–36–039–AMC–0137(E)	5	1,124	11,855	Incl	Incl	11,855
	9	28	8,400	Incl	Incl	8,400
DAAB–05–68–C–0035	17, 18, 19, 33, 39, 45, and 46.	1,186	[1] 3,410	$415	$229	4,054

[1] 3-year multiyear price, not applicable unless all 3 years are procured.

While the foregoing tabulation represents the contract values it does not represent the final price to the Government for Contracts DA–36–039–AMC–10418(E) and DA–36–039–AMC–0137(E). These two contracts are subject to incentive price revision and it is anticipated that the final prices will be less than the target price values reflected above. When the final prices for Contracts DA–36–039–AMC–10418(E) and DA–36–039–AMC–0137(E) are established and adjusted for the non-recurring effort, it is anticipated that if such prices were plotted in a traditional progress improvement curve, a curve of approximately 80 to 85% would result.

Such an improvement trend supports the theory that lower costs are obtained thru volume production and that you expect to pay less for an item as the quantity of units produced increases. While there are no established standards as to the exact slope of any improvement curve, the indicated trend would not vary substantially from values which might be used for forward projections. Since the price of the most recent quantity procured, i.e., 1186 units under a multi-year arrangement was established under competitive conditions, and since that price would plot reasonably well on a line of "best fit" progress improvement curve, there appears to be little basis to assume that substantial savings could have been achieved if the earlier contract quantities had been procured under different methods.

The final price to the Government for supplies obtained thru the formal advertisement procedure is dependent upon many factors which include the firmness and the adequacy of the procurement package, the time available for initiation of a production program and efficient performance to a specified delivery requirement and the competitive environment existing within Industry at the time that bids are advertised. It is

extremely difficult to recreate the exact conditions facing both procurement officials and prospective suppliers with regard to a specified procurement. However, from the facts available to me I sincerely doubt that timely deliveries could have been obtained at substantial savings from the prices to be finally negotiated under Contracts DA-36-039-AMC-10418(E) and DA-36-039-AMC-0137(E) had the procurements been effected thru formal advertisement procedures.

Very truly yours,

GENERAL DYNAMICS CORPORATION,
A. G. DAUBERT,
General Manager, Electronics Division.

NBC BIAS CONTINUES

Mr. DOLE. Mr. President, we have heard and read so much about the negative aspects of Richard Nixon's Presidency that unless one knew better he would expect that Mr. Nixon is the most unpopular President in history. Moreover, one would think that all this negativism portrayed in today's media would reflect itself in opinion polls.

A brief look at the Gallup opinion index from the time Mr. Nixon took office shows that the contrary is true. Indeed, President Nixon has had a consistently favorable rating in those polls, never dropping below a majority.

Of course, one reason for the doom and gloom in our American media is that the large newspapers and national networks often work hard to show only the bad side of this administration.

In a recent interview with the Copley News Service, Dr. George Gallup, the pollster, made the following interesting observation:

> The newspapers and the networks will resist the idea that they are not giving both sides. But if you go to the American public and say, "Do you think they are giving a balanced view of events?" you would find they would say, "No, they aren't."

As if to prove Dr. Gallup out, NBC showed us just how biased they can be when they recently carried the results of a survey by Louis Harris, who is a kind of Democrat Party house pollster. Predictably, Mr. Harris found the President to be in disfavor with the public, and NBC duly reported the fact. Then NBC went Harris one better by conducting man-in-the-street interviews, searching for people to substantiate the Harris result.

I have never heard of NBC searching out favorable citizens when a favorable Gallup poll comes out. When the President did so markedly well in the polls after the successful Cambodian operation, we did not see any of NBC's roving reporters out interviewing people who agreed with those poll results.

Yet, despite NBC, the President continues to carry favorable ratings in the Gallup poll.

Mr. President, there is no question in the minds of those of us who have been out in the country that Gallup is right: Mr. Nixon continues to enjoy the support and confidence of the great majority of Americans.

I ask unanimous consent that a Gallup poll on this subject be printed in the RECORD.

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

GALLUP POLL—PRESIDENT NIXON'S POPULARITY

Question: "Do you approve or disapprove of the way Nixon is handling his job as President?"

[In percent]

Interview dates	Approve	Disapprove	No opinion
Jan. 23-29, 1969	59	5	36
Feb. 21-24, 1969	61	6	33
Mar. 14-17, 1969	65	9	26
Mar. 28-31, 1969	63	10	27
Apr. 11-14 1969	61	11	28
May 2-5, 1969	64	14	22
May 16-20, 1969	65	12	23
May 23-26, 1969	65	12	23
June 20-23, 1969	63	16	21
July 11-14, 1969	58	22	20
July 26-28, 1969	65	17	18
Aug. 15-18, 1969	62	20	18
Sept. 12-15, 1969	60	24	16
Sept. 19-22, 1969	58	23	19
Oct. 3-9, 1969	57	24	19
Oct. 17-20, 1969	56	29	15
Nov. 14-17, 1969	68	19	13
Dec. 12-15, 1969	59	23	18
Jan. 2-5, 1970	61	22	17
Jan. 16-19, 1970	63	23	14
Jan. 30-Feb. 7, 1970	66	23	10
Feb. 28-Mar. 2, 1970	56	27	17
Mar. 20-22, 1970	53	30	17
Mar. 27-29, 1970	55	23	12
Apr. 17-19, 1970	56	31	13
May 2-5, 1970	57	31	12
May 22-25, 1970	59	29	12
June 19-21, 1970	55	31	14
July 10-12, 1970, released July 30	61	28	11
July 31-Aug. 2 1970, released Aug. 20	55	32	13
Aug 28-Sept. 1970, released Sept. 13	56	30	14
September (to be released)	57	30	13

IN SUPPORT OF SECTION 344 OF THE TRADE ACT OF 1970: GLYCINE

Mr. BAKER. Mr. President, in a Senate speech given August 21, 1970, and again in a press release dated last Friday, the senior Senator from New York (Mr. JAVITS) attacked the provision in the trade bill giving much needed relief to the sole-surviving domestic producer of glycine.

The Senator from New York stated:

> The quota provision on glycene [sic] protects only one firm in the United States—

Which is true—

> to the detriment of all consumers using glycene [sic].

Which is definitely and emphatically untrue, unless there is some sort of correlation or presumption that it is inherently detrimental to consumers whenever legislation protects only one firm. The reason, I might add, why the United States has only one firm now producing glycine is that the Japanese and French succeeded in driving the other U.S. producers, Benzol Products, Inc., and Dow Chemical Co., out of glycine production with an intensive dumping campaign begun in 1965. As for detriment to consumers, let it suffice to say that the U.S. price has declined from $1.06 per pound in 1964 to 75 cents at the present.

The Senator from New York has also questioned whether 2 days of hearings before the Finance Committee will "adequately outline the supply-demand-price relationships affecting glycine." I should think the answer is no, inasmuch as there will not be any witnesses testifying on the substance of the glycine provision.

Therefore, for the information of the Senator from New York, and for all other interested Senators, I ask unanimous consent that the report of the U.S. Tariff Commission on its 2-year investigation into the dumping of glycine be printed in the RECORD following the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BAKER. Mr. President, I think this document, which represents practically the entire public record on glycine imports and their injurious effects, will provide every interested party with sufficient background information. In researching the record before Ways and Means, I find that no foreign glycine producer or import interest bothered to testify before the Ways and Means Committee, although this legislation had been introduced for over 3 years at the time of the hearings.

Mr. President, before I conclude my remarks, I should like to emphasize a few of the major points from the record that relate to the need and desirability for enactment of Section 344.

First of all, the Tariff Commission found that in 1967 alone, the last full year before imports were affected by antidumping proceedings, imports sold at less than fair value—dumping prices—accounted for 35 percent of total U.S. glycine consumption, and perhaps more, and sold at prices which averaged as much as 25 to 30 percent less than the price of domestically produced glycine.

Secondly, as a result of foreign dumping, domestic production fell by more than 40 percent while imports increased by 140 percent between 1966 and 1967. By the end of 1967, imports, which had supplied less than 25 percent of U.S. consumption in 1964, had taken over 70 percent of the U.S. market. Japanese imports alone increased 600 percent during this period and were resold by importers at prices which averaged 28 to 32 percent per pound below Chattem's price.

Thirdly, there is no administrative remedy, either in present law or proposed in other provisions of the 1970 Trade Act, which would secure for Chattem Drug & Chemical Co. needed protection from further unfair import competition or relieve the damage already sustained from dumping.

It is true that as a result of affirmative dumping and injury determinations under the antidumping statute, direct less than fair value imports from France and Japan have been curtailed. However, the problem is now with indirect less than fair value imports shipped to the United States via West Germany, Denmark, and other European countries.

By shipping to firms in third countries which divert and resell to the United States, foreign producers can continue to dump glycine on the U.S. market with impunity under the antidumping laws. That this has actually taken place is a fact well documented and reported by the Tariff Commission in connection with its investigation. Indeed, it was reported by that body that Japanese glycine has been sold via Denmark on the U.S. market at prices which average 20 cents below the Japanese home market value. Moreover, there is unrefuted evidence in the record that, at least in the case of the Japanese, this practice will

continue. I ask unanimous consent that a letter from a large chemical brokerage firm to Mr. Charles Colburn of Chattem Drug & Chemical also be printed following my remarks.

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

(See exhibit 2.)

Mr. BAKER. Mr. President, this letter contains reliable commercial intelligence which clearly establishes the intent of the Japanese to continue dumping in circumvention of U.S. laws.

In view of the continued threat that less than fair value imports pose for the domestic glycine industry and the inadequacy of administrative remedies to cope with this form of unfair foreign competition or compensate for the damage already done, I urge the Finance Committee to retain the glycine provision in the Ways and Means trade bill in order to insure fair competition and stability in the U.S. glycine market.

EXHIBIT 1

AMINOACETIC ACID (GLYCINE) FROM FRANCE: DETERMINATION OF INJURY IN INVESTIGATION NO. AA1921–61 UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED

On November 17, 1969, the Tariff Commission was advised by the Assistant Secretary of the Treasury that Aminoacetic Acid (Glycine) from France is being, and is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission on November 18, 1969, instituted investigation No. AA1921–61 to determine whether an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held beginning on January 13, 1970. Notices of the investigation and hearing (subsequently postponed) were published in the *Federal Register* (34 F. R. 18775; 20076).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the majority of the Commission has determined that an industry in the United States is being injured by reason of the importation of aminoacetic acid sold at less than fair value within the meaning of the Antidumping Act 1921, as amended.[1]

STATEMENT OF REASONS FOR AFFIRMATIVE DETERMINATION

Views of Commissioners Clubb, Newsom and Moore

This case arises under the Antidumping Act of 1921, as amended, section 201(a) of which [2] requires that whenever the Secretary of the Treasury determines that a "class or kind of foreign merchandise" is being sold in the United States at less than fair value (hereinafter LTFV), he shall advise the Tariff Commission whereupon the Tariff Commission shall determine whether a domestic industry is being, or is likely to be, injured "by reason of the importation of such merchandise." Pursuant to this Act the Treasury Department has informed the Commission that Aminoacetic Acid (Glycine) [3] is being imported from France at less than fair value.[4]

Footnotes at end of article.

We have determined that (1) neither our investigation nor our findings are limited to the countries designated by the Treasury Department and (2) that the "class or kind of foreign merchandise" before the Commission is glycine imported at LTFV, not just that imported from France. After considering the effect of all imports of glycine at LTFV, we have determined that an industry in the United States is being injured by reason of such imports.

This case has its origin in the period 1966–67 when competition in the United States glycine market became increasingly severe as large quantities of imported glycine entered the U.S. market at LFTV prices—prices which averaged as much as 25% to 30% less than the price of domestically produced glycine.

As a result of this price structure, domestic production fell by more than 40%, while imports increased by 140% between 1966 and 1967. By the end of 1967, imports, which had supplied less than 25% of U.S. consumption in 1964, had taken over 70% of the U.S. market. At that time imports were supplied by four countries in the following proportions: Japan, 39%; the Netherlands, 36%; France, 13%; and Germany, 12%.

On March 1, 1968, these proceedings were begun when Chattem Drug and Chemical Company, the sole U.S. producer of glycine, filed a dumping complaint with the Treasury Department, alleging that imports from all four countries were being sold at less than fair value. In April and May 1969 the Treasury Department terminated its proceedings against the exporters from West Germany [5] and the Netherlands [6] for reasons not in issue here. This left only imports from Japan and France still involved, and despite the fact that it appears from the record that both were being sold at LTFV, the Treasury Department in November 1969 terminated its proceedings against the Japanese exporters and referred the case of the French imports alone to the Commission for an injury determination.

It is the Treasury Department's reason for the termination of its proceedings against LTFV imports from Japan which has caused the principal problem in this case. The Secretary found that both the French and the Japanese exporters' sales prices were less than their home market prices, and, accordingly, both were selling at less than fair value within the meaning of the Antidumping Act. Nevertheless, because the Japanese exporter agreed to discontinue the LTFV sales, the Treasury Department officially found that imports from Japan were not being sold at LTFV,[7] despite the fact that the evidence clearly shows that they were when the complaint was filed. Imports from France, on the other hand, were found to be LTFV, and this matter was referred to the Commission for an injury determination.[8]

The problem with the dismissal of the Treasury Department proceedings against Japanese LTFV imports is that the Japanese exporters were the principal disruptive force in the U.S. market—the French LTFV imports merely played a contributory role. The Japanese exporters sold at much lower prices and in much larger quantities than the French,[9] and undoubtedly were the major cause for the filing of the complaint. Yet if the Commission confines its investigation and determination to France, the country designated in the Treasury Department notice, it is possible that either no injury determination at all could be made (the conclusion reached by Commissioners Thunberg and Leonard), or that the dumping determination would be made against the French exporters who were not the principal offenders (the conclusion reached by Chairman Sutton).

This presents a procedural issue which has not been involved in prior cases.

The Antidumping Act requires the Secretary of the Treasury to notify the Commission when he has determined that a "class or kind of foreign merchandise" is being imported at less than fair value. In the past the Secretary has always attached a country designation to his advice to the Commission, as he did in this case. For example, the Commission has been advised of LTFV sales of Window Glass from the U.S.S.R., Chromic Acid from Austria, and Concord Grapes from Canada. In each instance the Commission as a matter of convenience limited the scope of its investigation to the LTFV imports from country named in the Treasury Department's notice.

We have never before had occasion to determine, however, whether we are legally bound by the country designation in the Treasury Department notice, because in no previous case has it been critical to our determination. To put it another way, we have never determined whether a product from country X is a different "class or kind of foreign merchandise" for purposes of the Antidumping Act than the identical product from country Y.[10] Accordingly, despite Commission acquiesence in the country designations which have been attached to dumping cases in the past, we believe that this issue is still to be decided. We reject the argument that our affirmative determination in this case upsets ancient and established precedents.

After reviewing the available authorities, we have determined that the Commission is not bound by the country designation in the Treasury Department notice. We find no evidence in the legislative history of the Antidumping Act that Congress intended the term "class or kind of foreign merchandise" to carry a geographical connotation, nor does the common meaning of "class" or "kind" found in the dictionary support it. "Class" is defined as "a number of . . . things regarded as forming a group by reason of common attributes, characteristics, qualities, or traits." [11] "Kind" is defined as "A class or group of individual objects . . . of the same nature or character or classified together because they have traits in common." [12]

Thus it is the qualities, attributes or traits inherent in the imported product itself which must determine its "class or kind" for purposes of the Antidumping Act.[13]

Realistically, it could not be otherwise. Congress enacted the Antidumping Act to protect domestic producers from unfairly priced imports of the "class or kind" produced by them. The geographic origin of the imported product is irrelevant to this issue. LTFV imports of glycine from one country have the same effect on the domestic producer as LTFV imports of glycine from any other country. Both are sold to potential customers of the domestic producer. Both have an effect on price competition in the domestic market. And both contribute to the injury to the domestic producer.

As the producer in this case observed, it is not possible to neatly separate the effects of French and Japanese LTFV sales, because a domestic producer subjected to unfairly priced imports from several sources is like a man assaulted by three assailants in a dark alley—he doesn't know which one cut his arm and which one put the lump on his head, all he knows is that the three combined injured him.

If the Commission's investigation and finding is limited by the country designation in the Treasury Department notice, as two of the dissenting Commissioners believe it is, we would be required to treat LTFV imports of glycine from each country as a separate "class or kind of foreign merchandise," and we would be required to trace and separate the effects of LTFV imports from each country, making separate injury determinations for each one. If we were unable to trace the effects of each country's LTFV sales, we would presumably be required to make a finding of no injury, despite the fact that the evidence clearly shows

the domestic producers has been severely injured by all LTFV imports combined.

We believe that such a rigid interpretation of our responsibilities runs counter to the plain words of the Act, as well as contrary to the obvious Congressional intent expressed therein. Accordingly, we hold that we are not bound by the country designations in the Treasury Department notice; that the matter before the Commission in this case is not "Glycine from France", but "Glycine"; and the issue is whether imports of glycine at less than fair value from all sources have injured the domestic glycine industry.

There can be no doubt that they have. During 1967, the last full year before imports were affected by this proceeding, imports sold at less than fair value in the United States market accounted for at least 35% of U.S. consumption, and perhaps more. These LTFV imports, especially those from Japan, sold at prices considerably below the domestic product, and had a substantial price depressing effect on the U.S. market. Under these circumstances there can be no doubt that the domestic industry has been injured by the LTFV imports.

It is argued that, however correct this interpretation of the Act might be for future cases, it cannot be utilized here because the Commission's Notice of Investigation referred only to LTFV imports of glycine from France, and to include LTFV imports from Japan in the investigation or findings would deny the Japanese exporter due process of law. In this connection our attention has been invited to *Carl Zeiss, Inc. v. United States,* 23 CCPA (1935). We think it is sufficient to note that the *Zeiss* case arose under a statute (Sec. 336 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1336) which directs that the Commission shall "hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings." In contrast, the Antidumping Act merely directs the Commission to conduct "such investigation as it deems necessary." Moreover, we note that there are no LTFV imports of glycine awaiting liquidation, and, accordingly, no dumping duties will be payable at this time either by the French or the Japanese exporters as a result of this determination.

In any event, failure to consider Japanese LTFV imports in this case would not only discriminate against the French exporter who would be barred from further dumping while his Japanese competitors would be under no such bar, but it would provide inadequate protection to the domestic producer as well. We think that such a result would be contrary to the requirements of the Antidumping Act.

Views of Chairman Sutton

In my opinion, an industry in the United States is being injured by reason of the importation of aminoacetic acid (glycine) from France, which is being sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended.

The Domestic Industry

In making this determination under section 201(a) of the Antidumping Act, 1921, as amended, I have considered the injured industry to be those facilities in the United States that produce aminoacetic acid (glycine), hereinafter referred to as "glycine".

In early 1964 the United States had two major producers of glycine; imports from all countries supplied one fourth of U.S. consumption and were sold by importers at prices considerably below the price of the domestic product. In the latter part of that year the complainant in this case became the third U.S. producer of glycine using a highly efficient new method of production which appears to have enabled the firm to be more competitive with imports than the other two firms. One of the two original producers ceased production in 1965. The other producer ceased production in the latter part of 1966 when it turned to foreign sources for supplies of glycine to sell in the United States, a major source being LTFV imports from France.

Glycine Imports

The complainant advised the Treasury Department that glycine was "being imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act". The Treasury Department investigated the pricing practices of all known world producers.

The Netherlands—Glycine from the Netherlands was found on the merits to be sold at or above fair value.[14]

West Germany.—Treasury's investigation of glycine from West Germany was discontinued with a determination of no sales at LTFV based on a cessation of production apparently wholly unrelated to the pendency of the dumping issue. The case was not decided on the merits.[15]

Japan.—Glycine from Japan was ascertained by Treasury to have been sold at LTFV prior to December 1968. However, upon receipt of assurances from the Japanese producers that they would cease shipping at prices below fair value to the United States, the Treasury made a "technical" determination of no sales at LTFV in 1969.[16] Direct imports of glycine from Japan were all sold at fair value after November 1968.

Treasury records indicate that the margins of dumping (or amounts of price discrimination) in the case of imports from Japan prior to December 1968 were generally much greater than the margin which existed in the case of the French imports. Also, the Commission received unrefuted evidence that Japanese glycine has been, and is being, sold in Europe at prices well below the Japanese market value, that some of these European shipments have been resold and diverted to the United States at about twenty cents below the Japanese market value.

France.—Glycine from France was determined to be, and likely to be, sold at less than fair value in the United States.[17] The margin of dumping (or amount of price discrimination) in the early onset of competition was for practical purposes equivalent to the price differential between domestic glycine and French glycine. French imports constituted 25 percent of all imports or 13.2 percent of U.S. consumption of glycine in 1968.

Cumulative and Sequential Impact of LTFV Imports

Because the Treasury published a negative determination regarding glycine imports from Japan, the producer of the LTFV imports from France, who ships glycine directly to the United States, has contended that it is not appropriate for the Commission to weigh the combined impact of the imports from both Japan and France in this case. He contends that we must consider only the impact of imports of French glycine; further, he contends that he has not undersold imports from Japan but has had to lower his prices to, or almost to, the price level of the Japanese product if he is to sell in the United States.

The contentions of the French producer must be rejected. These contentions are based upon technical matters regarding the respective jurisdictions of the Treasury and the Tariff Commission under the Act. In my opinion, these technical matters, as will be explained below, do not preclude the Commission's consideration of the cumulative and sequential impact on the domestic industry of all LTFV imports from both Japan and France.

The Antidumping Act establishes two separate but interrelated jurisdictions—the first being in the Treasury, and the second being in the Tariff Commission. The statute vests in the Treasury sole authority to determine the existence or likelihood of LTFV sales and to define the class or kind of merchandise involving such sales, and vests in the Tariff Commission sole authority to determine whether an industry in the United States is being or is likely to be injured by such LTFV imports. The Treasury only can initiate action under the Act. The Tariff Commission derives its jurisdiction wholly from the formal determination of the Treasury. The Commission has no authority to review and revise the Secretary's action in any respect nor, in my judgment, does it have authority to make formal determinations of injury pursuant to which the Treasury, in making and publishing the requisite "finding" under section 201(a), would be obligated to provide for possible assessment of dumping duties outside the scope of Treasury's initial determination regarding LTFV sales. Accordingly, in my opinion, the Commission's formal action in this case must necessarily be limited to a determination of injury which can apply only to imports of glycine from France.

The foregoing conclusion, however, does not foreclose the possibility of giving consideration to the LTFV imports from Japan. The mutually exclusive jurisdictions vested in the Treasury and the Tariff Commission—while occasioning problems from time to time in regard to coordination of the respective functions of each agency—do not compel this result in this case. The Commission in previous determinations under the Antidumping Act has been guided by the principle that all LTFV imports of a particular product from various sources sold in the United States at the same time or in sequence may be considered in the aggregate in the context of both their cumulative and sequential impact in the U.S. markets.[18] It will be noted that each of these precedents involves LTFV sales which were the subject of formal affirmative determinations of the Treasury Department, whereas in the present case one of the Treasury's formal determinations was in the negative. The sole question, therefore, is whether the formal negative determination in this case as a matter of law vitiates the persuasiveness of the earlier Commission precedents.

In two of the earlier cases (pig iron and potash), no technical problem existed for the reason that Treasury's formal affirmative determinations with respect to LTFV imports from all sources were simultaneously before the Commission. In the other case (cement), however, it will be observed that the Customs Court has upheld the propriety of the Commission's looking into the sequential connection between LTFV imports in the case before it and LTFV imports in an earlier one involving cement from another source. Likewise, in my judgment, it is appropriate in this case for the Commission to look outside the formal Treasury determination before it in order to determine, if possible, the facts requisite to a proper disposition of the case.

As previously indicated, the Treasury's negative determination with respect to glycine imports from Japan was published in the *Federal Register.* This determination clearly shows on its face (1) that the action taken was not on the merits but was remedial in nature, (2) that Treasury revealed to the Japanese suppliers that the exporter's sales price and purchase price were lower than home market value (or, in other words, were at LTFV), and (3) that Treasury's action was premised upon having received from the Japanese exporter assurances that no future sales would be made in the United States at LTFV. The technical nature of Treasury's formal determination therefore is clearly

Footnotes at end of article.

demonstrated on its face. From this published Treasury determination the Commission can accept as a fact that Japanese shipments of glycine to the United States made prior to the giving of assurances were sold at LTFV. In addition, information supplied to the Commission from Treasury records not only corroborates this fact but also reveals the very substantial margins of dumping involved. I cannot conclude in the circumstances that such legal technicalities prevent the Commission from giving due consideration to all LTFV imports of glycine from both Japan and France.

Conditions of Competition

The market for glycine in the United States has experienced a modest growth and has an apparent excellent growth potential because of the many uses being made of the product. It is apparent that supplies will have to increase if future needs are to be met. Despite this glowing description for a market, glycine is priced too low for a healthy domestic industry and a close examination of the conditions of competition needs to be made to ascertain the reasons why the domestic industry is suffering from low prices and whether such low prices are attributable to sales at LTFV.

To understand the full effect of LTFV sales on our domestic industry, it became apparent that we had to look not only at our domestic market place, but the world market, if we were to make a proper appraisal. Japanese glycine sold at LTFV not only came directly into the United States, but also via Denmark. French glycine came not only directly to the United States, but it has also been imported via West Germany, the Netherlands, Denmark, and England at prices below fair value at determined by Treasury.

Japanese producers, by reason of their selling for export at prices below their home market prices, have been the dominant price leaders in the world market as well as in the United States. Their prices in both markets are generally the lowest and must be met by other foreign producers if sales are to be consummated. This appears to hold true particularly with respect to the glycine producer in the Netherlands, as virtually none of the product is consumed in the Netherlands and the producer must depend entirely on sales in the world market where delivered cost in the market place is the principal governing factor is making a sale. For that reason the Netherland's glycine cannot be sold at a price for export to the United States or elsewhere that it might otherwise command were the Japanese to sell for export only at their home market price. I mention that the Netherland's producer in this case because it is the major producer in Europe who has clearly not sold at LTFV and is currently the only known European producer outside of France. Thus, I find that glycine imports, though at fair value, nevertheless enter the United States at depressed or suppressed prices as a principal result of the Japanese practice of price discrimination, but also in part because of the price discriminating practices of the French producers.

Market penetration.—The largest U.S. imports in 1964–66 came from the Netherlands, the next largest from Japan, and then France. In 1967 the Japanese became the largest supplier. Imports of French glycine are coming in increasing quantities into the United States via Belgium, Denmark, England, and West Germany at prices considerably below fair value. During the period 1964 to 1967, inclusive, imports increased their penetration of the U.S. market from 25 to 70 percent. Indeed, Japanese sales in the United States increased 600 percent in the last year of that period. U.S. exports of glycine have been negligible.

Price suppression or depression.—As a direct or indirect effect of the LTFV sales by the Japanese and French producers, all imports at the unusually low prices have either suppressed or depressed the U.S. market price for glycine.

In 1964, the weighted average price of imported glycine from all sources was 14 cents a pound less than the weighted average price of domestic glycine. In 1965, when the complainant emerged as a third domestic producer on the market, the prices of glycine from virtually every source dropped. The weighted average price of one domestic producer dropped 2 cents per pound, another 4 cents per pound, and the new producer (the highly efficient plant) entered the market at a price several cents lower than either of its domestic competitors. Still, the average price of imports in 1965 was 13 cents per pound less than the average price of the domestic product. At this point of time, one of the early domestic producers ceased production. In 1966, the average price of imports dropped an additional 6 cents per pound and the domestic average price dropped 17 cents per pound, with a mere 2 cents-per-pound lower average price applicable to the imported product. At this price level, the second domestic producer ceased production and started importing the product to supply its customers. The average price of all glycine has continued to drop each year to date, the average prices for domestic glycine being higher each year than the average price of imported glycine (by 6 cents in 1967 and 4 cents in 1968 and 1969). Thus, importers of glycine have undersold domestic producers of glycine in every year for the last six years.

STATEMENT OF REASONS FOR NEGATIVE DETERMINATION

Views of Commissioner Thunberg

The Congress has divided the responsibility for administering the Antidumping Act between the Treasury Department and the Tariff Commission. Such a bifurcation of responsibility can be administered successfully—and all parties concerned treated equitably—only if the demarcation between the activities of the two agencies is unequivocally and unambiguously specified. By the language of the statute, "whenever the Secretary of the Treasury determines that a class or kind of foreign merchandise . . . ," the Secretary of the Treasury is assigned responsibility for classifying, categorizing, defining the commodity being sold at less than fair value (LTFV) for purposes of administering the act. Depending on the nature of the commodity and the markets in which it is sold, the scope of the appropriate classification scheme may be more or less inclusive. But authority for so specifying the commodity being sold at less than fair value is unquestionably assigned to the Secretary of the Treasury and legal and administrative precedent supports his authority to delimit the definition of the commodity. In the present case the commodity has been so defined as "aminoacetic acid (glycine) from France."

In assigning to the Treasury Department responsibility for determining whether sales at less than fair value occur, the Congress implied that that agency must investigate the volume of sales at less than fair value and the margins by which the purchase prices of goods exported to the United States differ from "fair value." In the case of a positive finding of LTFV sales, the statute implies that it is the responsibility of the Secretary of the Treasury to communicate to the Tariff Commission the specifics of its determination—the precise data of quantities sold at less than fair value, the margins at which these quantities were sold below fair value and the period of time over which these sales occurred. Whether or not LTFV imports cause injury to a domestic industry depends in preponderant part of how much is sold and at what margins below fair value. A small margin of dumping could, for example, be injurious if it has characterized a large volume of imports in a highly competitive market. Alternatively, a small volume of LTFV sales could cause injury if the margin of dumping were sufficiently great. In this case LTFV sales of 150,000 pounds of glycine, sold at an average dmping margin of about 18 percent, were determined by the Treasury Department to have taken place between March 1, 1968 and August 11, 1969.

An injury determination can be reached only after the specifics of quantity and value have been made available. The demarcation between Treasury responsibility and Tariff Commission responsibility for the successful operation of the law implies that Treasury functions are suspended with its determination *and communication* to the Tariff Commission of the facts concerning quantity and value of LTFV sales. On the basis of the specific facts provided by the Treasury, the Tariff Commission assumes responsibility for determining whether injury has been caused. In the present case the Tariff Commission announced on November 18, 1969, that it was initiating an investigation to determine whether sales at less than fair value of aminoacetic acid (glycine) *from France* are injuring or are likely to injure a domestic industry. By its announcement the Commission confined its investigation of injury to the effects of imports of glycine from France at less than fair value.

LTFV imports from France in 1968 amounted to about 7 percent of domestic consumption of glycine. The sole domestic producer of glycine, The Chattem Drug & Chemical Co., consumes about two-thirds of its own output which amounts to one-quarter to one-third of total U.S. consumption. The sales of glycine to other domestic consumers thus account for only one-third of Chattem's production. No evidence was found that sales of LTFV imports from France caused Chattem to lower its selling prices or to lose sales.

The margin of dumping in absolute terms was smaller than the difference between the price of the domestic glycine and the prices at which imports from Japan were sold in the domestic market. During 1967–69, moreover, average annual prices received by the sole importer of LTFV glycine from France for imported glycine sold in the U.S. market were generally higher than the average prices received for glycine by other importers and about equal to the average prices received by the domestic producer. Chattem's production and sales of gylcine, which increased steadily in 1965–68, have expanded markedly in recent months to satisfy new demands. Since the company's unit production costs decline substantially as volume increases, the larger output should enable it to compete more effectively than formerly with imports. I have concluded, therefore, that LTFV imports from France are not causing and are not likely to cause injury to a domestic industry.

Views of Commissioner Leonard

I find no industry in the United States is being or is likely to be injured or is prevented from being established by reason of the importation into the United States of Aminoacetic Acid (Glycine) from France which the Treasury determined is being, and is likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended.

Although total imports of glycine have increased substantially in recent years, imports at LTFV from France constituted but a small portion of total imports and at no time achieved a substantial penetration of the U.S. market. As Commissioner Thunberg reports, the Commission's investigation did not substantiate that sales of glycine from France at LTFV caused the domestic producer either to lose sales or to reduce his selling prices. In fact, the average prices received during 1967–69 by the only importer of the LTFV glycine from France were not

only higher than those received by most other importers, but were somewhat higher than those received by the domestic producer.

While the record of the investigation fails to support a finding of injury or likelihood of injury to a domestic industry by reason of the importation of LTFV glycine from France alone, the basis of the findings of the majority in this investigation requires me to discuss imports of glycine from Japan. Such imports increased 600 percent in only one year, from 65,000 pounds in 1966 to 492,000 pounds in 1967, as Japan became the principal supplying country. The evidence produced during the Commission's investigation indicates that the Japanese exporters sold at much lower prices than did other foreign suppliers. During 1966–68, a large part of the glycine imported from Japan was resold by the importers at prices 17 to 26 cents per pound below the weighted average price received by all importers. The low price of glycine from Japan, coupled with the large increase in such imports in 1967 and 1968, almost certainly was a principal factor in causing price reductions in the U.S. market for glycine.

Despite such evidence, much of which also appeared in Treasury files, the Treasury published in the *Federal Register* a determination that "Aminoacetic Acid (Glycine) from Japan is not being, nor likely to be, sold at less than fair value."[20] Therefore, the Commission cannot determine that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States "of such merchandise," glycine from Japan.

With Treasury making such a negative determination on sales of glycine from Japan and, therefore, not sending such sales to the Commission for an injury determination, I cannot go beyond the statute and in some way be influenced by the Japanese glycine sales to find affirmatively in this investigation. Since I cannot consider the effect of the sales of glycine from Japan, I must render a negative finding on the question of injury to a domestic industry from LTFV sales of glycine from France. On the other hand, a majority of the Commission finds affirmatively because it does consider the effect of the sales of Japanese glycine.

Commissioners Clubb, Newsom and Moore take account of the sales of Japanese glycine by determining that an industry in the United States is being injured by reason of imports of glycine from France and other countries. They disregard the country designation in the Treasury determination and contend that once Treasury makes an affirmative determination on a particular item of commerce, the Commission can consider all sources of that item in deciding whether injury is present.

This view of three-fourths of the majority may have been more appropriate if it had been taken when the Commission received the initial Treasury determination drawn along country lines. But that would have been in November, 1954, when the Treasury determined affirmatively on muriate of potash from the Soviet Zone of Germany. However, the Commission in that investigation [21] and in every dumping investigation since has deliberately confined the scope of its notice and injury determination in accordance with the Treasury designation of source from which the commodity came. If Treasury's long-continued practice of designating the country or origin were outside the terms of the statute, the Congress, it is assumed, would have since corrected it in its considerations of the Antidumping Act and amendments thereto.[22] The issue has been present in every Treasury determination coming before the Commission. There never having been a challenge to the country designation until now, it is too much a part of the operational framework of the statute for the Commission at this late date to read out designation of source of the commodity in the present antidumping investigation.

Besides, if the Commission were to choose the instant investigation to begin to ignore the country designation, it should have done so upon the institution of the investigation and the issuance of the public notice. However, the public notice read:

"AMINOACETIC ACID FROM FRANCE

"Notice of investigation and hearing

"Having received advice from the Treasury Department on November 17, 1969 that Aminoacetic Acid (Glycine) from France is being, and is likely to be, sold in the United States at less than fair value, the United States Tariff Commission has instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States."

The Commission is bound by that public notice. Its finding cannot go beyond the description of the merchandise in that notice. Where the Commission does not confine its investigation to the matters contained in its public notice, its findings and recommendations based upon such investigation are without authority of law and invalid.[23]

Nor are the views of Chairman Sutton of any more comfort to me. In his view, an industry in the United States is being injured by reason of LTFV imports of glycine from France, but, to find thusly, he examines the impact of the Japanese glycine sales on the total market structure and the world price situation. He extends what is termed the cumulative and sequential impact doctrine of past Commission decisions to find that French LTFV sales, on top of Japanese LTFV sales, are injuring the domestic glycine industry.

I have supported the cumulative and sequential impact theory in the past.[24] Last year's potash opinion of Chairman Sutton and myself expands his views expressed in a 1968 investigation.[25]

The doctrine referred to holds that Treasury determinations of LTFV sales of a product from all sources may be considered together in order to find injury resulting from the sales from any one source. Further, the Treasury determinations of sales at LTFV need not all be formally before the Commission at the same time. Earlier Treasury LTFV determinations can be examined by the Commission in investigating possible injury resulting from sales of the same product from a different source determined to be LTFV by Treasury at a later date.[26]

Treasury's practice of issuing its findings by procedurally or administratively separating the countries or producers which ship LTFV imports to the United States has no necessary investigative effect on the Commission's determination of injury.[27] However, while the Commission need not consider each Treasury LTFV determination independently of any other for a particular product, the Commission cannot consider as sales at LTFV sales of a product from one source determined by the Treasury not to be LTFV along with Treasury determined LTFV sales of the same product from another source. To do so in a case such as this one preempts Treasury's jurisdiction and is not in my view a permissible application of the cumulative and sequential impact theory. It is this which distinguishes the instant proceeding from the cumulative and sequential impact line of investigations.

Here, LTFV sales of the commodity from one country, Japan, have not been transmitted by the Treasury to the Commission to be joined with LTFV sales of the commodity from another country, France, which have so been sent by the Treasury to the Commission.

It may be true that in fact there were Japanese glycine sales in the United States at prices lower than the home market price. The files of the Treasury viewed by the Commission would so indicate. Even Treasury's September 27, 1969 "Notice of Tentative Negative Determination" includes such a statement.[28] But it is also true that the final word from Treasury, the final determination from Treasury, is that "Aminoacetic Acid (Glycine) from Japan is not being, nor likely to be, sold at less than fair value.[29]

It matters not the reason for the Treasury determination, a negative one in return for the Japanese assurances that there will be no more sales at LTFV. It can even be characterized as technical. All that matters is that Treasury's determination was negative. That being the case, this Commission can go no further. We cannot consider the Japanese sales as other than fair value sales in trying to assess their effect on the French sales and in turn the effect on the domestic industry. Regrettable as it may be, Treasury's determination of glycine from Japan not being, nor likely to be, sold at LTFV based on assurances from Japan not to sell at LTFV in the future precludes the Commission in this investigation from determining under the statute injury to an industry in the United States.

FOOTNOTES

[1] Commissioners Clubb, Newsom, and Moore determine that an industry is being injured by reason of imports of glycine from France and other countries. Chairman Sutton determines that an industry in the United States is being injured by reason of imports of glycine from France and deems it inappropriate for the Commission to make its determination extend beyond such imports. Commissioners Thunberg and Leonard determine in the negative.

[2] Section 201(a) of the Antidumping Act provides in pertinent part as follows:

"Whenever the Secretary of the Treasury . . . determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured . . . by reason of the importation of such merchandise into the United States." . . . 19 U.S.C. § 160(a).

[3] Glycine is a white, odorless, crystalline material with a sweetish taste which is used principally in pharmaceuticals. It is also used as a post-operative nutriment for intravenous feeding and as a low calorie sweetener.

[4] Letter from Assistant Secretary Rossides to Chairman Sutton dated November 12, 1969.

[5] In April 1969 the Secretary of the Treasury determined that Glycine from West Germany was not being, and was not likely to be sold at less than fair value because "The only known producer of Aminoacetic Acid (Glycine) for exportation to the United States has discontinued production of the product and has given assurances that not further shipments will be made to the United States." (34 F.R. 2210 (1969).) The final negative determination for West Germany was filed April 11, 1969. (34 F.R. 6447 (1969).)

[6] In May 1969 a negative determination by the Secretary was made with respect to shipments from the Netherlands (because glycine from that source was being sold at fair value). (34 F. R. 7334 (1969).) The final negative determintaion for the Netherlands was filed June 26, 1969. (34 F. R. 11427 (1969).)

[7] A tentative determination for Japan was filed September 27, 1969, and read in pertinent part as follows:

Footnotes at end of article.

"I hereby make a tentative determination that Aminoacetic Acid (Glycine) from Japan is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

"Statement of reasons on which this tentative determination is based . . .

"Comparison between purchase price or exporter's sales price and home market price revealed that exporter's sales price and purchase price were lower than home market price.

"Upon being advised of the above, exporters of the glycine from Japan provided assurances that they would make no sales to the United States at less than fair value within the meaning of the Antidumping Act."

The final negative determination for Japan was filed November 28, 1969. It stated that—

"The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded until November 7, 1969, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

"No written submissions or requests having been received, I hereby determine that for the reasons stated in the tentative determination, Aminoacetic Acid (Glycine) from Japan is not being, nor likely to be, sold at less than fair value (section 201(a) of the Act; 19 U.S.C. 160(a))." (34 F. R. 19210 (1969).)

[8] 34 F.R. 18559 (1969).

[9] Data relating to sales and prices were submitted in confidence to the Commission. Rules prohibiting the disclosure of confidential information prevent a more precise statement of facts.

[10] Implicitly, it might be said that we have determined that identical products are in the same "class or kind" of merchandise, since in cases where imports of the same product from several countries have been before us at the same time, we have tested the cumulative effect of all. *Pig Iron from East Germany, Czechoslovakia, Romania and the U.S.S.R., Potash from Canada, France and West Germany.* If the product from one country was a different "class or kind" of merchandise than the identical product from another country, the Act would require that we treat each separately.

[11] Random House Dictionary of the English Language (1966), pg. 272.

[12] *Id.*, at 787.

[13] Judicial interpretation of similar statutory terms also establishes that a class must be determined by the inherent characteristics of the thing or persons being classified, and not by such extraneous considerations as geography or ownership. See, *Switchmen's Union of N. America v. National B. Board,* 135, F. 2d 785, 793–94 (D.C. Cir., 1943), rev'd. on other grounds 320 U.S. 297; *Inter County Rural E. Cooperative Corp. v. Reeves,* 171 S.W. 2d 978 (Kty. 1943); *Star-Kist Foods, Inc. v. United States,* 150 F. Supp. 737 (Cust. Ct., 1956).

[14] 34 F.R. 7334; 11427.

[15] 34 F.R. 2210; 6447.

[16] 34 F.R. 15564; 19210.

[17] 33 F.R. 14079; 18559.

[18] See majority opinions in investigation No. AA1921–22 (portland cement), affirmed in *City Lumber Co. et al* v. *United States,* R.D. 11557 (now on appeal before the Court of Customs and Patent Appeals); investigations No. AA1921–52, 53, 54 and 55 (pig iron); and investigations No. AA1921–58, 59 and 60 (potassium chloride).

[19] Two out of three producers have ceased production and it is evident that they felt their participation in the industry was not reasonably profitable.

[20] 34 *Fed. Reg.* 19210 (Dec. 4, 1969).

[21] *Muriate of Potash from Soviet Zone of Germany,* U.S. Tariff Comm. Release, Feb. 25, 1955.

[22] Treasury has from the inception of its jurisdiction in 1921 used source limitations in describing the articles within the scope of its proceedings under the Act. No changes in this practice have been made or suggested by the Congress. Customs Simplification Act of 1954, P.L. 83–768, 68 Stat. 1136, (1954); Antidumping Act Amendment, P.L. 85–630, 72 Stat. 583, (1958); Renegotiation Amendments of 1968, P.L. 90–634, 82 Stat. 1347 (1968).

[23] *Carl Zeiss, Inc.* v. *U.S.* 76 F. 2d 412 (1935), (23 CCPA 7); *Best Foods Inc. v. U.S.* 218 F Supp. 576, 587 (Concur, opinion) (Cust. Ct., 1963).

[24] *Muriate of Potash from Canada, France and West Germany,* AA1921–58, 59, 60 (November 1969) T.C. Pub. 303.

[25] *Pig Iron from East Germany, Czechoslovakia, Romania and the USSR,* AA1921–52, 53, 54, 55 (September 1968) T.C. Pub. 265.

[26] *City Lumber Co. v. United States.* R.D. 11557 (July 1968), appeal filed before CCPA.

[27] *Muriate of Potash from Canada, France and West Germany,* AA1921–58, 59, 60 (November 1969) T.C. Pub. 303 at 4–9; and *Pig Iron from East Germany, Czechoslovakia, Romania, and the USSR,* AA1921–52, 53, 54, 55 (September 1969) T.C. Pub. 265 at 4–10.

[28] 34 *Fed. Reg.* 15564 (Oct. 7, 1969).

[29] 34 *Fed. Reg.* 19210 (1969).

EXHIBIT 2

EAST COAST CHEMICALS CO.,
Cedar Grove, N.J., November 21, 1969.

CHATTEM CHEMICAL CO.,
Chattanooga, Tenn.

DEAR MR. COLBURN: This will confirm our telephone conversation concerning Glycine. As I explained one of our suppliers from whom we occasionally purchase imported chemicals from both Japan and Western Europe is now planning to bring in Glycine. The reason he talked to us concerning this is that he knows we represent you folks and felt that he could offer to us a better arrangement.

I am told that the material will be of Japanese origin and more than likely come in from Germany. I am told that the reason for this is that because of existing trade agreements as well as the "dumping problem" one can purchase Japanese Glycine in a European country more cheaply than they can purchase it directly from Japan. This is not at all unusual and applies to several chemicals of which we are aware.

I am told that the price as of now is $.48 per pound, duty paid, as discussed and is identified only as NF–12 material. There is some indication that we will be able to get the price down to $.47 although this is not yet firm. We are attempting if at all possible to learn the name of the Japanese producer in this particular instance.

It appears that the importer is going to go after all known users of Glycine in a most aggressive manner and at the present time is considering pricing on the order of $.55 per pound delivered. This would be for the smaller accounts and quite possibly they will be willing to go off another penny or so for truckload quantities.

I do not know what, if anything, can be done about this but certainly "forewarned is forearmed".

If there are any comments or anything additional you would like me to do in this connection please let me know and we will do the best we can.

With kindest regards, I remain,

Very truly yours,

E. C. MISSBACH.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

EQUAL RIGHTS FOR MEN AND WOMEN

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The assistant legislative clerk read the 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 Senate proceeded to consider the joint resolution.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ERVIN. Mr. President, the most compassionate prayer ever uttered was the prayer spoken by the lowly Man of Galilee when He was hanging upon the cross at Calvary. He looked upon those who were crucifying Him, and prayed this prayer in their behalf:

Then said Jesus, Father, forgive them; for they know not what they do.

This is the most compassionate of all prayers, as recorded in the 34th verse of the 23d chapter of the Gospel according to Luke.

It is not my purpose to be sacrilegious in any respect, but I say with all sincerity that those who advocate the adoption of the equal rights amendment stand in need of this prayer, because they do not know what they do.

I would say, furthermore, Mr. President, that those who occupy the state of ignorance as to what this amendment would be interpreted to mean, like the Senator from North Carolina, also stand in need of a prayer of this nature. Frankly, I do not know what the Supreme Court is going to say this amendment means; and when I say that, I put myself in the same state of ignorance which embraces every other Member of the Senate who is going to be called upon to vote upon the proposed amendment and every Member of the House of Representatives who already has voted upon the proposed amendment.

A very significant remark was made by Robert Sherrill, a correspondent for the Nation, in an article published in the New York Times a few days ago on this precise point.

Mr. Scherrill said—and he said quite truthfully—

The equal-rights amendment's journey down the corridors of Congress has so far been an impressive demonstration of what can be achieved through almost total ignorance. No one in Congress can make even a reasonably good case as to the amendment's probable effect on laws covering such matters as wife support, child support, military conscription, and property division.

Notwithstanding the fact that no one can safely predict what this amendment will be interpreted to mean in the event it is submitted by Congress to the States and ratified by the States, we have insistent demands that we immediately vote, in our present state of ignorance, on this amendment.

In other words, we are urged to act in haste and let the wives, the mothers, the working women, and the widows of America lament the probable consequences of this amendment in leisure.

One of the difficulties incident to present-day legislation arises from the fact that before a Member of Congress can educate Congress, he has to educate the news media of the country and depend upon the news media of the country to educate the Members of Congress. The New York Times of Saturday, October 10, 1970, published an editorial indicating that the news media of the country are about to become educated with respect to this amendment. The New York Times made some very cogent observations concerning this amendment and concerning the total ignorance as to its future interpretation on the part of Congress, on the part of its proponents, and on the part of the country generally. It makes some comments on the fact that this amendment has been traveling to and fro in Congress for 47 years and that nobody has attempted to make a complete study as to its probable interpretation and as to its probable consequences. So the New York Times, in this editorial, warns Congress not to be in any haste to submit this amendment to the States for ratification or rejection.

Despite this fact, we have in respect to this amendment, during the current session of Congress, a virtually unprecedented effort to prevent any study of this amendment being made by any congressional committee. There were no hearings upon this amendment in the House of Representatives, and the House of Representatives voted on this amendment after some 60, 65, or 70 minutes of debate. It voted upon this amendment upon the assertion, which has been repeated on the floor of the Senate, that the Supreme Court of the United States has never held that a woman is even a person within the meaning of the 14th amendment. I do not think that a more extravagant and a more in supportable assertion than that has ever been made. The strange thing about it is that to prove the truth of that assertion, those who make it refer to the case of *Hoyt* v. *Florida*, 368 U.S. 57. This very case says this:

> Several observations should initially be made. We, of course, recognize that the Fourteenth Amendment reaches not only arbitrary classes of exclusions from jury service based on race or color but also all other exclusions which single out any class of persons for different treatment not based on some reasonable classification.

What that means in plain English is that the 14th amendment prohibits a State from making any legal distinctions between one group of persons, whether they be men, women, or children, and another group of persons, whether they be men, women, or children, unless that distinction is based upon a reasonable classification. I expect later to make further allusions to the Hoyt case.

At this moment, I should like to call attention to the fact that some leaders of our women's organizations are flatly opposed to the submission of the proposed amendment to the States for ratification or rejection.

Among these women are:

Dorothy Height, president, National Council of Negro Women.

Dolores Huerta, vice president, United Farm Workers Organizing Committee.

Mary Dublin Keyserling, former director Women's Bureau—U.S. Department of Labor.

Margaret Mealey, executive director, National Council of Catholic Women.

Ruth Miller, former chairman, California Advisory Commission on the Status of Women.

Sarah Newman, general secretary, National Consumers League.

Mary E. Switzer, former administrator, Social and Rehabilitation Service; U.S. Department of Health, Education, and Welfare.

Dr. Cynthia Wedel, former member, President's Commission on the Status of Women.

Mrs. Leonard H. Weiner, national president, National Council of Jewish Women.

Elizabeth Wickenden, professor of urban studies, City University of New York; former member, Citizen's Advisory Council on the Status of Women.

Myra Wolfgang, vice president, Hotel and Restaurant Employees' and Bartenders' International Union.

Mr. President, it was stated on the floor of the Senate last week by the Senator from Indiana that any reasonable man could read the amendment and determine what it means. I consider the Senator from Indiana to be a reasonable man. He was queried as to the meaning of the amendment by the junior Senator from Missouri (Mr. EAGLETON), and the Senator from Indiana admitted, in reply to interrogatories propounded to him by the Senator from Missouri, that he would have to leave some of the questions asked him by the Senator from Missouri to the courts for decision and for that reason was unable to answer them.

Well, let us see whether the statement that all reasonable men can understand exactly what the amendment means is supported by the facts.

As Gov. Al Smith of New York was wont to remark, "Let's look at the record."

One of the most knowledgeable men in the United States on this subject in Prof. Paul A. Freund. He teaches constitutional law at Harvard Law School. He has this to say about the amendment:

> That the proposed equal rights amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainly . . . The amendment expresses noble sentiments, but I'm afraid it will work much mischief in actual application. It will open a Pandora's box of legal complications.

Professor Freund testified before the Judiciary Committee in opposition to the amendment and pointed out many of the dire consequences which could insue if the amendment should be submitted by Congress to the States and ratified by the States.

I digress here to note—as I have said before—that there have been more obstacles thrown in the way of an intelligent understanding of the amendment in this session of Congress than has ever characterized consideration of any other legislative proposal during the 16 years I have been privileged to be a Member of the Senate.

I have already stated that there were no hearings in the House and that the consideration of the amendment in the House was for approximately 60, 65, or 70 minutes, or thereabouts; but when the amendment came to the Senate, the amendment was stopped at the desk and placed on the Calendar for immediate consideration without any committee hearings and without any committee consideration, notwithstanding that the rules of the Senate contemplate that proposals to amend the Constitution shall be referred to the Judiciary Committee and considered by that committee, and that the Senate should have a report and recommendation from the Judiciary Committee with respect to proposed constitutional amendments before the Senate votes upon such constitutional amendments.

After this proposed amendment was passed by the House and placed on the Senate Calendar, instead of being allowed to take its normal course and being referred to the Judiciary Committee for study and report, the overwhelming majority of the Judiciary Committee, with one member opposing and one member abstaining, adopted a request of the Senate leadership in which they asked the Senate leadership to permit the amendment to take its regular course and be referred to the Judiciary Committee for study and report to the Senate prior to its consideration by the Senate. That request has been ignored by the Senate leadership.

Notwithstanding the fact that the resolution has never been referred to the Judiciary Committee for study and report, the Judiciary Committee held hearings on a companion measure introduced by the Senator from Indiana, and received the testimony of such knowledgeable persons as Prof. Paul A. Freund, Philip B. Kurland, Mrs. Myra Wolfgang, Mrs. Mary Dublin Keyserling, and others.

Unfortunately, the testimony taken by the Judiciary Committee has just been printed and Senators have not yet had an opportunity to avail themselves of the advice which that testimony affords them concerning the dangers of this particular proposed amendment.

I respectfully submit that instead of trying to hurry Senate action on this proposal, we should strive to have intelligent action rather than hasty action, and should at least postpone consideration of the measure until Senators have an opportunity to study the testimony just made available to Members of the Senate.

This is the first time in my experience as a Member of the Senate that it ap-

pears the proponents of such an important matter as a proposed constitutional amendment seem to want the Senate of the United States to legislate in darkness rather than in light.

I mentioned a moment ago that Prof. Paul A. Freund, of the Harvard Law School, is a reasonable man, that he has studied the proposed amendment, and that he has warned the Senate against approving it in its present form, not only during the hearings held by the Judiciary Committee during this year, but as far back as 1953.

Prof. Philip Kurland, professor of constitutional law at the University of Chicago and editor of the annual publication known as the Supreme Court Review, had this to say concerning the proposed amendment:

H.J. Res. 264 is in keeping with much of the temper of our times that demands instant and simplistic solutions to complex problems, that assumes that the cure for such problems is the utterance of the magic word "equality," and that the proper governmental agency for effecting the cure is the judiciary.

The following is a release by the Women's Bureau of the Department of Labor in February 1970 concerning the proposed amendment. Presumably the Women's Bureau of the Department of Labor is staffed by women, and presumably those women are intelligent and are capable of expressing an opinion in respect to this question. Here is what the release says:

There are a great many questions concerning the equal-rights amendment, but very few answers.

The editor of the Wall Street Journal, who is known to me to be a highly intelligent man, notwithstanding the fact that his father tried, very unsuccessfully, to teach me some Latin many years ago, when I was a student at the University of North Carolina at Chapel Hill, had this to say about the proposed amendment:

We are all for ladies, but even so, before we write some new words into the Constitution, it'd be nice to know what they really do mean.

A number of the intelligent women whom I named a moment or so ago as being opponents of the proposed amendment are affiliated with labor unions which are collective bargaining agents for women who work in the industries of America. The AFL–CIO has joined them in opposition to the amendment, as is reflected by a statement made by Andrew J. Biemiller, legislative director of the AFL–CIO. This is what Mr. Biemiller said:

A myriad of legal relationships in every area of life . . . might be affected by the equal rights amendment, with uncertain and possibly inequitable results in particular situations where identity of treatment might not yield true equality of treatment between the sexes.

Prof. Soia Mentschikoff, of the Chicago Law School, had this to say about the amendment:

The litigation could be endless. The courts would have to decide whether sex can ever be a reasonable classification.

Mr. President, I have read some of the documents which have been issued in support of this amendment. With all due respect to those who wrote them, I would have to say that the documents exhibit symptoms of intellectual schizophrenia.

These articles start out with a flat assertion that the equal rights amendments will abolish every existing Federal or State law which makes any legal distinction between men and women and that it will render the Congress and the legislatures of all 50 of the States powerless at any time in the future to enact any new laws which make any legal distinction between men and women.

After making these assertions, however, the writers of this propaganda recognize that they are trapping themselves in their own words. So they proceed in the documents they have prepared to contradict themselves.

They recognize that under the assertions they have made, they are asking the Congress of the United States and the legislatures of all 50 States to give up their power to enact laws which recognize that the good Lord made physiological and functional differences between men and women and to forget that rational action on the part of Congress and the 50 States requires them to enact such laws.

Then they proceed to assert in contradiction of what they have already said that laws which are beneficial to women will not be affected by this amendment although the amendment, they reiterate, is designed to make identical legal beings of men and women. In so doing, the writers of this propaganda emulate the example of the man in Aesop's Fable who blew both hot and cold with the same breath.

Another reasonable person, who opposes this amendment is Cernoria Johnson, Washington Director of the National Urban League. Cernoria Johnson has this to say about the amendment:

The Urban League is not in favor of current proposals which could eliminate protective standards for women or which might adversely affect their economic welfare, health, privacy or special responsibilities as mothers.

Prof. James J. White of the Law School of the University of Michigan said this in his testimony before the Committee on the Judiciary:

If I were a Senator, my reaction would be that I would vote against H.J. Res. 264 and I would seek to accomplish the goals by additional legislation. . . . It would be great for lawyers, though.

Glen Alison, Washington director, National Association of Social Workers, said this about the amendment:

The Equal Rights amendment could alter legal, economic, and other relationships between men and women. These are complex issues affecting the basic tenets of our society, which do not lend themselves to the blunderbuss approach of the Equal Rights Amendment.

In August of this year the New York Times made editorial comment on this amendment, in which it deplored the hasty manner in which it had been considered in the House of Representatives. In the editorial the New York Times said:

The clear responsibility of the Senate is to give the amendment the thorough analysis it never got in the House. The Constitution and the rights of women are both too important for any further playing to the ladies' gallery.

Mrs. Leonard H. Weiner, national president, National Council of Jewish Women, had this to say concerning the proposed amendment:

The effect of the Equal Rights Amendment upon our law proposes a great many questions to which the proponents have given no answers. . . . The Amendment is not the proper vehicle for the elimination of whatever discriminations against women might still exist.

Mrs. Norman F. Folda, national president, National Council of Catholic Women, had this to say:

We are opposed to the passage of the Equal Rights Amendment because it will jeopardize many socially desirable laws necessary for the maintenance and strengthening of the family structure.

Miss Evelyn Dubrow, legislative representative, International Ladies' Garment Workers' Union, had this to say about the amendment:

Under the proposed (Equal Rights) Amendment, a number of essential legislative safeguards of women's rights as industrial citizens would be wiped out. This should not be permitted to happen.

Miss Dubrow is the legislative representative of an organization which represents thousands of women who are employed in industry. She says, and quite correctly, that the amendment would destroy many safeguards which have been adopted by legislative bodies on both the national and the local level for the protection of women's rights.

During my opening remarks I mentioned the fact that an editorial in the New York Times of October 10, 1970, had warned Congress against hasty action on this amendment. The New York Times pointed out that society does make many discriminations against women. It points out that many of these discriminations have their origin outside of the law and owe their existence solely to the practices of our society. It also points out that certain Federal legislation, such as the Civil Rights Act of 1964 and the equal pay law, which was made part of the Fair Labor Standards Act and certain Executive orders have done much to relieve legal discriminations against women, and it adds that more can be done by legislation, but that enforcement of the laws already on the books at least is necessary.

This is the warning against the hasty approval of this amendment:

The Federal courts have not yet entered into the struggle for sexual equality as they have for racial equality. But it seems highly probable, given the present state of public opinion, that the courts will soon be giving the Fourteenth Amendment's "equal protection of the laws" provision a more up-to-date reading where women are concerned. Once they do so, any possible need for the Equal Rights Amendment would vanish.

What is particularly distressing is that even now—nearly a half-century after the proposed amendment's initial presentation—no one has prepared a definitive assessment of the possible damage its broad language might do to existing legal safeguards for women. As Paul Freund of the Harvard Law School and other experts have pointed out, the impact of the amendment on laws protecting women workers and on those gov-

erning marriages and estates would be incalculable.

On balance, we believe it unwise suddenly to push through Congress a Constitutional amendment of unknown effect and possibly damaging results—however impeccable its intentions.

I repeat that closing statement of the editorial:

On balance, we believe it unwise suddenly to push through Congress a Constitutional amendment of unknown effect and possibly damaging results—however impeccable its intentions.

Mr. President, I ask unanimous consent that the editorial from the New York Times which I have read in part be printed in full at this point in the body of the RECORD as a part of my remarks.

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

EQUAL RIGHTS

Women suffer serious and widespread discrimination in many fields of American life. The question for the Senate as it debates the Equal Rights Amendment to the Constitution, already approved by the House, is not the fact of discrimination but whether a constitutional amendment is the right way to remedy it.

Hearings last month of the New York City Commission on Human Rights amply demonstrated that virtually every woman who goes to work—and 43 per cent of all women over the age of sixteen do work—suffers in comparison with her male counterpart, whether she is a domestic servant or a professional woman with an Ivy League degree. It does not matter what measurement is used—median earnings, opportunity for apprenticeships and advanced training programs, rate of promotion, variety of assignments open to her. In every one, the woman worker lags significantly. Moreover, the gap on most fronts is widening, not narrowing.

In architecture and engineering, a woman is treated only somewhat better than a leper. Even in higher education where a more open attitude might be expected to prevail, it is rare in most universities to find a woman who is president, dean, head of department, or full professor.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of sex. The Senate last week voted to give the Equal Employment Opportunities Commission authority to issue cease-and-desist orders to enforce the 1964 act. An executive order forbids sex discrimination in employment by Federal contractors. There is a Federal equal-pay law, and 39 states and the District of Columbia also have laws requiring equal pay. More can be done by legislation, but tighter enforcement of the laws already on the books is at least as necessary.

The Federal courts have not yet entered into the struggle for sexual equality as they have for racial equality. But it seems highly probable, given the present state of public opinion, that the courts will soon be giving the Fourteenth Amendment's "equal protection of the laws" provision a more up-to-date reading where women are concerned. Once they do so, any possible need for the Equal Rights Amendment would vanish.

What is particularly distressing is that even now—nearly a half-century after the proposed amendment's initial presentation—no one has prepared a definitive assessment of the possible damage its broad language might do to existing legal safeguards for women. As Paul Freund of the Harvard Law School and other experts have pointed out, the impact of the amendment on laws protecting women workers and on those governing marriages and estates would be incalculable.

On balance, we believe it unwise suddenly to push through Congress a Constitutional amendment of unknown effect and possibly damaging results—however impeccable its intentions.

Mr. ERVIN. Mr. President, this amendment deserves thorough study. It deserves consideration by the Senate Judiciary Committee. I propose, after the recess, to make a motion that this amendment be permitted to take the regular normal course pointed out by the Senate rules for constitutional amendments, and that it be referred to the Senate Judiciary Committee so that that committee, which is composed entirely of lawyers, can express to the Senate an opinion concerning the amendment.

I return now to the case of *Hoyt* v. *Florida*, 368 U.S. 57. This case makes as clear as the noonday sun in a cloudless sky that the statement that the Supreme Court has never held that women are persons within the purview of the 14th amendment is totally insupportable. This case arose in Florida. A woman was convicted of the second degree murder of her husband by a jury composed entirely of men. It eventually reached the Supreme Court of the United States upon her allegation that the State of Florida excluded women from service upon juries in State courts and that she was a person within the purview of the 14th amendment, and that by reason of the exclusion of women from juries by the State of Florida in State trials, she had been deprived of the equal protection of the laws under the provision of the 14th amendment which says, in substance, that no State shall deny to any person within its jurisdiction the equal protection of the laws.

The Supreme Court recognized that she was right in one respect, and that was that the 14th amendment covers with the shield of its protection all human beings, whether they be men or women or children. It rejected her appeal, however, on the ground that the State of Florida did not exclude women from juries, and that, she had not been denied the equal protection of the laws.

Since this case has been cited to prove the absurd contention of the proponents of this amendment that women are not persons within the meaning of the 14th amendment, I ask unanimous consent that the entire opinion be printed at this point in the body of the RECORD as a part of my remarks.

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

HOYT *v.* FLORIDA: APPEAL FROM THE SUPREME COURT OF FLORIDA

No. 31. Argued October 19, 1961.—Decided November 20, 1961.

Appellant, a woman, killed her husband and was convicted in a Florida state court of second-degree murder. She claimed that her trial before an all-male jury violated her rights under the Fourteenth Amendment. A Florida statute provides, in substance, that no woman shall be taken for jury service unless she volunteers for it. *Held:* The Florida statute is not unconstitutional on its face or as applied in this case. Pp. 58–69.

(a) The right to an impartially selected jury assured by the Fourteenth Amendment does not entitle one accused of crime to a jury tailored to the circumstances of the particular case. It requires only that the jury be indiscriminately drawn from among those in the community eligible for jury service, untrammelled by any arbitrary and systematic exclusions. Pp. 58–59.

(b) The Florida statute is not unconsitutional on its face, since it is not constitutionally impermissible for a State to conclude that a woman should be relieved from jury service unless she herself determines that such service is consistent with her own special responsibilities. Pp. 59–65.

(c) It cannot be said that the statute is unconstiutional as applied in this case, since there is no substantial evidence in the record that Florida has arbitrarily undertaken to exclude women from jury service. Pp. 65–69.

119 So. 2d 691, affirmed.

Herbert B. Ehrmann argued the cause for appellant. With him on the brief were *Raya S. Dreben* and *C. J. Hardee, Jr.*

George R. Georgieff, Assistant Attorney General of Florida, argued the cause for appellee. With him on the brief was *Richard W. Ervin*, Attorney General.

Dorothy Kenyon and *Rowland Watts* filed a brief for the Florida Civil Liberties Union et al., as *amici curiae*, urging reversal.

Mr. JUSTICE HARLAN delivered the opinion of the Court.

Appellant, a woman, has been convicted in Hillsborough County, Florida, of second degree murder of her husband. On this appeal under 28 U.S.C. § 1257 (2) from the Florida Supreme Court's affirmance of the judgment of conviction, 119 So. 2d 691, we noted probable jurisdiction, 364 U.S. 930, to consider appellant's claim that her trial before an all-male jury violated rights assured by the Fourteenth Amendment. The claim is that such jury was the product of a state jury statute which works an unconstitutional exclusion of women from jury service.

The jury law primarily in question is Fla. Stat., 1959, § 40.01 (1). This Act, which requires that grand and petit jurors be taken from "male and female" citizens of the State possessed of certain qualifications,[1] contains the following proviso:

"provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list."

Showing that since the enactment of the statute only a minimal number of women have so registered, appellant challenges the constitutionality of the statute both on its face and as applied in this case. For reasons now to follow we decide that both contentions must be rejected.

At the core of appellant's argument is the claim that the nature of the crime of which she was convicted peculiarly demanded the inclusion of persons of her own sex on the jury. She was charged with killing her husband by assaulting him with a baseball bat. An information was filed against her under Fla. Stat., 1959, § 782.04, which punishes as murder in the second degree "any act imminently dangerous to another, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual . . . ." As described by the Florida Supreme Court, the affair occurred in the context of a marital upheaval involving, among other things, the suspected infidelity of appellant's husband, and culminating in the husband's final rejection of his wife's efforts at reconciliation. It is claimed, in substance, that women jurors would have been more understanding or compassionate than men in assessing the quality of appellant's act and her defense of "temporary insanity." No claim is made that the jury as constituted was otherwise afflicted by any elements of supposed unfairness. Cf. *Irvin* v. *Dowd*, 366 U.S. 717.

Of course, these premises misconceive the scope of the right to an impartially selected

Footnotes at end of article.

jury assured by the Fourteenth Amendment. That right does not entitle one accused of crime to a jury tailored to the circumstances of the particular case, whether relating to the sex or other condition of the defendant, or to the nature of the charges to be tried. It requires only that the jury be discriminately drawn from among those eligible in the community for jury service, untrammelled by any arbitrary and systematic exclusions. See *Fay* v. *New York*, 332 U.S. 261, 284–285, and the cases cited therein. The result of this appeal must therefore depend on whether such an exclusion of women from jury service has been shown.

I

We address ourselves first to appellant's challenge to the statute on its face.

Several observations should initially be made. We of course recognize that the Fourteenth Amendment reaches not only arbitrary class exclusions from jury service based on race or color, but also all other exclusions which "single out" any class of persons "for different treatment not based on some reasonable classification." *Hernandez* v. *Texas*, 347 U.S. 475, 478. We need not, however, accept appellant's invitation to canvass in this case the continuing validity of this Court's dictum in *Strauder* v. *West Virginia*, 100 U.S. 303, 310, to the effect that a State may constitutionally "confine" jury duty "to males." This constitutional proposition has gone unquestioned for more than eighty years in the decisions of the Court, see *Fay* v. *New York*, *supra*, at 289–290, and had been reflected, until 1957, in congressional policy respecting jury service in the federal courts themselves.[2] Even were it to be assumed that this question is still open to debate, the present case tenders narrower issues.

Manifestly, Florida's § 40.01(1) does not purport to exclude women from state jury service. Rather, the statute "gives to women the privilege to serve but does not impose service as a duty." *Fay* v. *New York*, *supra*, at 277. It accords women an absolute exemption from jury service unless they expressly waive that privilege. This is not to say, however, that what in form may be only an exemption of a particular class of persons can in no circumstances be regarded as an exclusion of that class. Where, as here, an exemption of a class in the community is asserted to be in substance an exclusionary device, the relevant inquiry is whether the exemption itself is based on some reasonable classification and whether the manner in which it is exercisable rests on some rational foundation.

In the selection of jurors Florida has differentiated between men and women in two respects. It has given women an absolute exemption from jury duty based solely on their sex, no similar exemption obtaining as to men.[3] And it has provided for its effectuation in a manner less onerous than that governing exemptions exercisable by men: women are not to be put on the jury list unless they have voluntarily registered for such service; men, on the other hand, even if entitled to an exemption, are to be included on the list unless they have filed a written claim of exemption as provided by law.[4] Fla. Stat., 1959, § 40.10.

In neither respect can we conclude that Florida's statute is not "based on some reasonable classification," and that it is thus infected with unconstitutionality. Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a State, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities.

Florida is not alone in so concluding. Women are now eligible for jury service in all but three States of the Union.[5] Of the forty-seven States where women are eligible, seventeen besides Florida, as well as the District of Columbia, have accorded women an absolute exemption based solely on their sex, exercisable in one form or another.[6] In two of these States, as in Florida, the exemption is automatic, unless a woman volunteers for such service.[7] It is true, of course, that Florida could have limited the exemption, as some other States have done, only to women who have family responsibilities.[8] But we cannot regard it as irrational for a state legislature to consider preferable a broad exemption, whether born of the State's historic public policy or of a determination that it would not be administratively feasible to decide in each individual instance whether the family responsibilities of a prospective female juror were serious enough to warrant an exemption.

Likewise we cannot say that Florida could not reasonably conclude that full effectuation of this exemption made it desirable to relieve women of the necessity of affirmatively claiming it, while at the same time requiring of men an assertion of the exemptions available to them. Moreover, from the standpoint of its own administrative concerns the State might well consider that it was "impractical to compel large numbers of women, who have an absolute exemption, to come to the clerk's office for examination since they so generally assert their exemption." *Fay* v. *New York*, *supra*, at 277; compare 28 U.S.C. § 1862; H. R. Rep. No. 308, 80th Cong., 1st Sess. A156 (1947).[9]

Appellant argues that whatever may have been the design of this Florida enactment, the statute in practical operation results in an exclusion of women from jury service, because women, like men, can be expected to be available for jury service only under compulsion. In this connection she points out that by 1957, when this trial took place, only some 220 women out of approximately 46,000 registered female voters in Hillsborough County—constituting about 40 per cent of the total voting population of that county[10]—had volunteered for jury duty since the limitation of jury service to males, see *Hall* v. *Florida*, 136 Fla. 644, 662–665, 187 So. 392, 400–401, was removed by § 40.01(1) in 1949. Fla. Laws 1949, c. 25,126.

This argument, however, is surely beside the point. Given the reasonableness of the classification involved in § 40.01 (1), the relative paucity of women jurors does not carry the constitutional consequence appellant would have it bear. "Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury or during some particular period." *Hernandez* v. *Texas*, *supra*, at 482.

We cannot hold this statute as written offensive to the Fourteenth Amendment.

II

Appellant's attack on the statute as applied in this case fares no better.

In the year here relevant Fla. Stat., 1955, § 40.10 in conjunction with § 40.02 required the jury commissioners, with the aid of the local circuit court judges and clerk, to compile annually a jury list of 10,000 inhabitants qualified to be jurors. In 1957 the existing Hillsborough County list had become exhausted to the extent of some 3,000 jurors. The new list was constructed by taking over from the old list the remaining some 7,000 jurors, including 10 women, and adding some 3,000 new male jurors to build up the list to the requisite 10,000. At the time some 220 women had registered for jury duty in this county, including those taken over from the earlier list.

The representative of the circuit court clerk's office, a woman, who actually made up the list testified as follows as to her reason for not adding others of the 220 "registered" women to the 1957 list: "Well, the reason I placed ten is I went back two or three, four years, and noticed how many women they had put on before and I put on approximately the same number." She further testified: "Mr. Lockhart [one of the jury commissioners] told me at one time to go back approximately two or three years to get the names because they were recent women that had signed up, because in this book [the female juror register], there are no dates at the beginning of it, so we can't—I don't know exactly how far back they do go and so I just went back two or three years to get my names." When read in light of Mr. Lockhart's testimony, printed in the margin,[11] it is apparent that the idea was to avoid listing women who though registered might be disqualified because of advanced age or for other reasons.

Appellant's showing falls short of giving this procedure a sinister complexion. It is true of course that the proportion of women on the jury list (10) to the total of those registered for such duty (some 220) was less than 5%, and not 27% as the trial court mistakenly said that the state appellate court may have thought. But when those listed are compared with the 30 or 35 women who had registered since 1952 (note 11, p. 66) the proportion rises to around 33%, hardly suggestive of an arbitrary, systematic exclusionary purpose. Equally unimpressive is appellant's suggested "male" proportion which we are asked to contrast with the female percentage. The male proportion is derived by comparing the number of males contained on the jury list with the total number of male electors in the county. But surely the resulting proportion is meaningless when the record does not even reveal how many of such electors were qualified for jury service, how many had been granted exemptions (notes 3 and 4, p. 61), and how many on the list had been excused when first called. (*Id.*)

This case in no way resembles those involving race or color in which the circumstances shown were found by this Court to compel a conclusion of purposeful discriminatory exclusions from jury service. *E.g.*, *Hernandez* v. *Texas*, *supra*; *Norris* v. *Alabama*, 294 U.S. 587; *Smith* v. *Texas*, 311 U.S. 128; *Hill* v. *Texas*, 316 U.S. 400; *Eubanks* v. *Louisiana*, 356 U.S. 584. There is present here neither the unfortunate atmosphere of ethnic or racial prejudices which underlay the situations depicted in those cases, nor the long course of discriminatory administrative practice which the statistical showing in each of them evinced.

In the circumstances here depicted, it indeed "taxes our credulity," *Hernandez* v. *Texas*, *supra*, at 482, to attribute to these administrative officials a deliberate design to exclude the very class whose eligibility for jury service the state legislature, after many years of contrary policy, had declared only a few years before. (See p. 64, *supra*.) It is sufficiently evident from the record that the presence on the jury list of no more than ten or twelve women in the earlier years, and the failure to add in 1957 more women to those already on the list, are attributable not to any discriminatory motive, but to a purpose to put on the list only those women who might be expected to be qualified for service if actually called. Nor is there the slightest suggestion that the list was the product of any plan to place on it only women of a particular economic or other community or organizational group. Cf. *Thiel* v. *Southern Pacific Co.*, 328 U.S. 217; *Glasser* v. *United States*, 315 U.S. 60, 83–87. And see also *Fay* v. *New York*, *supra*, at 287.

Finally, the disproportion of women to men on the list independently carries no constitutional significance. In the administration of the jury laws proportional class representation is not a constitutionally required factor. See *Akins* v. *Texas*, 325 U.S. 398, 403; *Cassel* v. *Texas*, 329 U.S. 282, 286–287; *Fay* v. *New York*, *supra*, at 290–291.

Finding no substantial evidence whatever in this record that Florida has arbitrarily

undertaken to exclude women from jury service, a showing which it was incumbent on appellant to make, *Hernandez* v. *Texas, supra*, at 479–480; *Fay* v. *New York, supra*, at 285, we must sustain the judgment of the Supreme Court of Florida. Cf. *Akins* v. *Texas, supra*.

Affirmed.

THE CHIEF JUSTICES, MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring.

We cannot say from this record that Florida is not making a good faith effort to have women perform jury duty without discrimination on the ground of sex. Hence we concur in the result, for the reasons set forth in Part II of the Court's opinion.

FOOTNOTES

[1] Jurors must be: "persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months, and who are duly qualified electors of their respective counties . . . ."

[2] From the First Judiciary Act of 1789, § 29, 1 Stat. 73, 88, to the Civil Rights Act of 1957, 71 Stat. 634, 638, 28 U.S.C. § 1861—a period of 168 years—the inclusion or exclusion of women on federal juries depended upon whether they were eligible for jury service under the law of the State where the federal tribunal sat. See *Ballard* v. *United States*, 329 U.S. 187, 191–192; *Glasser* v. *United States*, 315 U.S. 60, 64–65. By the Civil Rights Act of 1957 Congress made eligible for jury service "Any citizen of the United States," possessed of specified qualifications, 28 U.S. § 1861, thereby for the first time making qualifications for federal jury service wholly independent of those prescribed by state law. The effect of that statute was to make women eligible for federal jury service even though ineligible under state law. See *United States* v. *Wilson*, 158 F. Supp. 442 aff'd, 255 F. 2d 686. There is no indication that such congressional action was impelled by constitutional considerations. Cf. *Fay* v. *New York, supra*, at 290.

[3] Men may be exempt because of age, bodily infirmity, or because they are engaged in certain occupations. Fla. Stat., 1959, § 40.08.

[4] Under Fla. Stat., 1959, § 40.12, every person claiming an exemption, other than as provided with respect to women in § 40.01 (1), must file, annually, before December 31 with the clerk of the circuit court an affidavit of exemption and the grounds on which such claim is based. The affidavit is forwarded to the jury commissioners, who, if the affidavit is found sufficient, then omit the affiant from the jury list for the succeeding calendar year. In case exemption is denied, the claim to it may be renewed in any court in which the affiant is summoned as a juror during that year. The exemption for such year is lost, however, by failure to file the required affidavit before the end of the preceding year.

[5] *Alabama*, Ala. Code, 1940 (Recompiled Vol. 1958), Tit. 30, § 21; *Mississippi*, Miss. Code Ann., 1942 (Recompiled Vol. 1956), § 1762; *South Carolina*, S.C. Code, 1952, § 38–52.

[6] *Alaska*, Alaska Comp. Laws Ann., 1949, § 55–7–24 Eighth; *Arkansas*, Ark. Stat., 1947, § 39–112; *District of Columbia*, D.C. Code, 1961, Tit. 11, § 1418; *Georgia*, Ga. Code Ann., 1933 (Supp. 1958), § 59–124; *Idaho*, Idaho Code, 1948, § 2–411 and (Supp. 1961) § 2–304; *Kansas*, Kan. Gen. Stat., 1949, § 43–116, § 43–117; *Louisiana*, La. Rev. Stat., 1950, § 15:172.1; *Minnesota*, Minn. Stat. Ann., 1947, § 593.04; (Supp. 1960) § 628.49; *Missouri*, Mo. Const., Art. I, § 22 (b); *Nevada*, Nev. Rev. Stat., 1957, § 6.020 (3); *New Hampshire*, N.H. Rev. Stat. Ann., 1955, § 500.1; *New York*, McKinney's N.Y. Laws, Judiciary Law (Supp. 1961), § 507 (7); *North Dakota*, N.D. Cent. Code, 1960, § 27–09–04; *Rhode Island*, R.I. Gen. Laws, 1956, § 9–9–11; *Tennessee*, Tenn. Code Ann., 1955, § 22–101, § 22–108; *Virginia*, Va. Code, 1950 (Replacement Vol. 1957, Supp. 1960), § 8–178 (30); *Washington*, Wash. Rev. Code, 1951, § 2.36.080; *Wisconsin*, Wis. Stat. Ann., 1957, § 6.015 (2).

In twenty-one States women, generally speaking, are eligible for jury service on the same basis and considerations as men: *Arizona*, Ariz. Rev. Stat. Ann., 1956, § 21–202, § 21–336; *California*, Calif. Code Civ. Proc., 1954, § 198, § 200, § 201; *Colorado*, Colo. Rev. Stat., 1953, § 78–1–1 (2), § 78–1–3, § 78–1–7; *Delaware*, Del. Code. Ann., 1953, Tit. 10, § 4504; *Hawaii*, Hawaii Const., Art. I, § 12; Hawaii Rev. Laws, 1955, § 221–3, § 221–4; *Illinois*, Smith-Hurd's Ill. Ann. Stat., 1935 (Supp. 1960), c. 78, § 4; *Indiana*, Burns' Ind. Ann. Stat., 1933 (Replacement Vol. 1946; Supp. 1961), § 4–3317; *Iowa*, Iowa Code Ann., 1950, § 607.2, § 607.3; *Kentucky*, Ky. Rev. Stat., 1960, § 29.035; *Maine*, Me. Rev. Stat., 1954, c. 116, § 7; *Maryland*, Michie's Md. Ann. Code, 1957, Art. 51, § 3 and (Supp. 1961) Art. 51, § 8 (women still have an absolute exemption in four counties); *Michigan*, Mich. Stat. Ann., 1938 (Supp. 1959), § 27.263, § 27.264; *Montana*, Mont. Rev. Code Ann., 1947, § 93–1304, § 93–1305; *New Jersey*, N. J. Stat. Ann., 1952 (Supp. 1960), § 2A:69–1, § 2A:69–2; *New Mexico*, N. M. Stat. Ann., 1953, § 19–1–2, § 19–1–31; *Ohio*, Page's Ohio Rev. Code. Ann., 1954, § 2313.12, § 2313.16; *Oregon*, Ore. Rev. Stat., 1959, § 10.040, § 10.050; *Pennsylvania*, Purdon's Pa. Stat. Ann., 1930, Tit. 17, § 1279, § 1280; *South Dakota*; S. D. Code, 1939 (Supp. 1960), § 32.1001, § 32.1002; *Vermont*, Vt. Stat. Ann., 1958, Tit. 12, § 1410; *West Virginia*, W. Va. Code, 1955 (Supp. 1960), § 5262.

[7] *Louisiana*, La. Rev. Stat., 1950, § 15:172.1; *New Hampshire*, N. H. Rev. Stat. Ann., 1955, § 500:1.

[8] In eight States women may be excused if they have family responsibilities which would make jury service an undue hardship: *Connecticut*, Conn. Gen. Stat. Rev., 1958, c. 884, § 51–218; *Massachusetts*, Mass. Gen. Laws Ann., 1959, c. 234, § 1, § 1A; *Nebraska*, Neb. Rev. Stat., 1943 (Reissue Vol. 1956), § 25–1601.01, § 25–1601.02; *North Carolina*, N. C. Gen. Stat., 1943 (Recompiled Vol. 1953; Supp. 1959), § 9–19; *Oklahoma*, Okla. Stat. Ann., 1951 (Supp. 1960), Tit. 38, § 28; *Texas*, Vernon's Tex. Rev. Civ. Stat., 1926 (Supp. 1960), Art. 2135; *Utah*, Utah Code Ann., 1953, § 78–46–10 (14); *Wyoming*, Wyo. Comp. Stat., 1945 (Supp. 1957), § 12–104.

[9] 28 U.S.C. § 1862 exempts from federal jury duty those in active service in the armed forces, members of federal or local police and fire departments, and certain actively engaged federal, state and local public officials. The House Report on the bill states:

"This section [§ 1862] makes provision for specific exemption of classes of citizens usually excused from jury service in the interest of the public health, safety, or welfare. The inclusion in the jury list of persons so exempted usually serves only to waste the time of the court."

[10] 114,247, of which some 68,000 were men.

[11] Mr. Lockhart testified:

"Q. All right. Now, getting back to March 8, 1957, how many eligible female women were registered in that book?

"A. Well, I don't know how many were qualified, but they have the names on there of about 220.

"Q. Approximately 220?

"A. As I say, from 1952, on, since I went back on the second time, there has only been about 35 that has registered with the Clerk of the Circuit Court.

"Q. All right, sir. Now, were there any eligible female names left off of this jury list which you've prepared?

"A. There probably were.

"Q. On March 8, 1957?

"A. From the last four years, we have been averaging about ten to twelve on each list.

"Q. All right. Why is that, Mr. Lockhart?

"A. Because since 1952, there has only been about 30, 35 that's qualified to, I mean, went down and registered for jury duty. You don't have much to choose from.

"Q. Well, now, how do you select women's names from that registration book?

"A. Well, we just have to take the names on there, that's all.

"Q. Well, you've used some system with reference to that book, do you not?

"A. Well, we try to check them through. They did before this last year. I tried to check them through the City Directory. You'll find that a good many of the women folks now are over 65. In fact, one of them is approximately eighty.

"Q. What I am trying to get at, Mr. Lockhart, is this. If there were only ten women's names, as you testified, went into the present jury list and there were at the time about 220 eligible women who had registered for jury service, why the difference between ten and 220 which were apparently eligible?

"A. Well, they have been put over a spread of years.

"Q. Well, how do you do that?

"A. Well, every year, there is a new jury list and we put on ten or twelve every jury list. In fact, along seven or eight years ago, it was pretty hard to see whether—the status changed so rapidly, it was pretty hard to know whether they would be qualified or not.

"Q. Would I be correct, then, in saying that you omitted approximately 210 eligible women's names when you compiled this list?

"A. I wouldn't say they were eligible because we didn't check them. We don't check every name on the registration books.

"Q. I'm talking about the registration book in the Clerk of the Circuit Court's office, Mr. Lockhart, where the women are required to come there and register for jury duty?

"A. You can say it's 220 names on that book. There is.

"Q. All right. If there are 220 eligible women on that book—

"A. I don't know if they are eligible or not.

"Q. What I want to know, then, is why you picked just ten out of that 220 to go into this jury list?

"A. Well, we picked—we have average, for the last four years, ten to twelve on each list.

"Q. Mr. Lockhart, in making up this list, jury list, from which the present panel was drawn, did you attempt to comply with Florida Statute, Section 40.01, sub-section (1), in making up that list?

"A. Would you mind reading it to me?

"Q. Well, that's the Statute, Mr. Lockhart, governing the qualifications for jurors and I will read it, if you like. (§ 40.01 read.) Now, what I am asking, Mr. Lockhart, is, did you purport to comply with that statute when you prepared this jury list?

"A. Yes, sir.

"Q. All right. Did you put in this list on March 8, 1957, any women or female's names who were registered voters but who had not registered with the Clerk of the Circuit Court?

"A. If it was there, we didn't intend to. We checked the registration. The law requires that to be on registration.

"Q. In other words, you would say that you did not?

"A. Yes. That's right. I doubt what, with that small number of names. They were checked with the registration office."

Mr. ERVIN. Mr. President, what did the Hoyt case hold? The Hoyt case held that, under the equal protection clause of the 14th amendment, every State law which makes any legal distinction between men and women is unconstitutional unless it is based on some reasonable classification.

Stating the proposition in another way, the Hoyt case held that the equal protection clause of the 14th amendment invalidates every State law that

treats men and women differently unless the difference in treatment is based upon some reasonable classification.

The Supreme Court pointed out in the Hoyt case that the laws of Florida did not exclude women from service upon grand and petit juries in that State; that the laws of Florida made both men and women eligible to serve upon grand and petit juries in the courts of Florida; that the laws of Florida did make a legal distinction between men and women in respect to their obligation—not their eligibility, but their obligation—to serve on grand and petit juries in the courts of the State; that this distinction lay in the fact that the laws of Florida provided that no woman should be compelled to serve upon a jury unless she notified the appropriate clerk of the court having jurisdiction in the area of her residence that service on the jury was compatible with her other obligations; that in the event she so advised the clerk of the court, she would be summoned to serve on grand and petit juries just as men were summoned; and that this difference in treatment of men and women in respect of jury service was reasonable because it took into consideration certain functional differences made by nature and society between men and women.

Some of the proponents of the pending amendment deplore this decision. This attitude rises out of the fact that there seems to be quite a difference of opinion between some of the proponents of the amendment, and those women who have assumed voluntarily the role of wives or the role of mothers, and those women who have assumed involuntarily, on account to their economic status, the role of workers in industry, and those women who have involuntarily assumed, by reason of the deaths of their husbands, the role of widows.

Under Florida laws, any business or professional woman is perfectly free to inform the clerk of the court of the jurisdiction in which she resides that service upon State juries will not conflict with her personal obligations, and thereby make it obligatory for herself to serve upon such juries in the same manner in which men are required to serve on such juries. Why the proponents of the amendment insist that homemakers should be compelled by law to leave their homes to serve on juries, that mothers should be compelled by law to neglect their children to serve on juries, and that working women should be compelled by law to leave their jobs to serve on juries, and why widows should be compelled by law to do their bidding, in this respect, is something I am incapable of comprehending.

It may be that in their view the courthouse has become more important than the home, and that in consequence they disagree with this observation made by the Supreme Court of the United States in the Hoyt case:

> In neither respect can we conclude that Florida's statute is not "based on some reasonable classification," and that it is thus infected with unconstitutionality. Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a State, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duties of jury service unless she herself determines that such service is consistent with her own special responsibilities.
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> Florida is not alone in so concluding. Women are now eligible for jury service in all but three States of the Union. Of the forty-seven States where women are eligible, seventeen besides Florida, as well as the District of Columbia, have accorded women an absolute exemption based solely on their sex, exercisable in one form or another. In two of these States, as in Florida, the exemption is automatic, unless a woman volunteers for such service. It is true, of course, that Florida could have limited the exemption, as some other States have done, only to women who have family responsibilities. But we cannot regard it as irrational for a state legislature to consider preferable a broad exemption, whether born of the State's historic public policy or of a determination that it would not be administratively feasible to decide in each individual instance whether the family responsibilities of a prospective female juror were serious enough to warrant an exemption.
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> Likewise we cannot say that Florida could not reasonably conclude that full effectuation of this exemption made it desirable to relieve women of the necessity of affirmatively claiming it, while at the same time requiring of men an assertion of the exemptions available to them. Moreover, from the standpoint of its own administrative concerns the State might well consider that it was "impractical to compel large numbers of women, who have an absolute exemption, to come to the clerk's office for examination since they so generally assert their exemption."
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> Appellant argues that whatever may have been the design of this Florida enactment, the statute in practical operation results in an exclusion of women from jury service, because women like men, can be expected to be available for jury service only under compulsion.

That last statement represents the attitude and reveals the reason why some militant proponents of the pending amendment want to compel all women to have to serve on juries, why they want homemakers to have to leave their homes and go to the courthouse for jury services, and why they want mothers to have to forsake their children and go to the courthouse, either to serve on juries or to ask the court for an excuse from service for their children's benefit.

The Supreme Court pointed out that 17 States have laws of this nature, and I would predict that the proponents of this amendment are not going to be very successful in persuading the legislatures of those 17 States to ratify an amendment which would outlaw their handiwork in enacting jury laws of this nature, and which would forever prohibit them, at any time in the future, from enacting any laws which take into consideration that there are functional differences between men and women which justify legislative bodies to make distinctions of the kind made in the Florida jury laws.

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

Mr. ERVIN. Yes.

Mr. BAYH. I have listened with a great deal of interest to the usual eloquence of my friend from North Carolina. I should like to make just one brief observation: I take issue with the Supreme Court's decision in Hoyt not because it protects women from being required to serve on juries against their will but, rather, because that even women who want to serve on juries, women who want to take advantage of their constitutional right, have to go to special pains in order to serve under the Florida statute. The Florida statute at issue in Hoyt did not require that a woman could be excused by saying, "I object. Remove me from this obstacle." Quite the contrary, the Florida statute said that any woman who wanted to serve on a jury had to leave her home or business and "register" with the clerk of court. I think this is wrong.

Mr. ERVIN. The Senator from Indiana is absolutely wrong as to what the statute requires. It does not say that she has to leave her home and go to the court. She can use her finger to dial the clerk's office and tell him over the telephone that she wants to serve, and it will not take more than 30 seconds to do it. All she need say is, "I am longing to serve on the jury."

Mr. BAYH. She has to make a special effort.

Mr. ERVIN. That is a terrible effort, is it not?

Mr. BAYH. Why should she not be treated as men, equally, under this particular statute?

Mr. ERVIN. Because there is an old Spanish proverb which says that an ounce of mother is worth a pound of priest. She should not be required to leave her children, who need her far more than the court does.

Mr. BAYH. It seems to me that if the Senator from North Carolina is going to be consistent—and he usually is—the proper statute would say that that woman could dial the telephone and say, "Relieve me from the burden of serving." Why should she have to telephone and say, "Treat me like a first-class citizen; stop treating me like a second-class citizen"?

Mr. ERVIN. This statute says, "Treat me like a mother, whose first obligation is to her children." That is what the statute says. It treats her like a mother.

Mr. BAYH. Mothers also happen to be citizens; and I do not see why they should be treated different from men conditions at home allow them to serve. Yet the Florida statute does this, and the Supreme Court has sustained it.

Mr. ERVIN. The Florida statute says to a mother, "If you feel that serving on a jury is consistent with the performance of your duty as a mother, all you have to do is to dial the clerk of the court and tell him so, and then you will be summoned to leave your children and serve on the jury." It gives the mother an option. But the statute recognizes that there are persons above all others whom the Lord God Almighty appointed to look after their little children during their maturing years. In effect, the Florida Legislature says to mothers. "You can be the judge of whether or not you want to serve on a jury and whether or not you think your service on the jury will be consistent with your duties as a mother. If so, then you can serve, and all you have to do is to dial the clerk's office and tell him so."

I believe in doing something special for mothers. The Senator from Indiana may believe that mothers should be treated just like everybody else, but I do not believe that, because I find a response in my heart for these words of Rudyard Kipling:

If I were hanged on the highest hill,
Mother o' mine, O mother o' mine!
I know whose love would follow me still,
Mother o' mine, O mother o' mine!

If I were damned of body and soul,
I know whose prayers would make me whole,
Mother o' mine, O mother o' mine!

I disagree fundamentally with my friend, the distinguished Senator from Indiana. I believe in giving a little special consideration to the mothers of our Nation. I do not believe I would want to classify them with the general run of society and drag them to the court houses to serve on juries when they feel that their duty is to their children whom the good Lord has given them.

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

Mr. ERVIN. I yield.

Mr. BAYH. Perhaps the great poet Kipling would turn over in his grave at this thought. But if we are going to be consistent, he ought to add one more line to that marvelous verse, which would read something like this:

If I would serve in the court house tall,
I would have to give the clerk a call.

In other words, if I am a mother or if I am a woman, I am going to have to do something special in order to have the chance to serve on a jury.

I suggest to the Senator from North Carolina that the Senator from Indiana has as much love for his mother and respect for motherhood as anybody else. But no one should be relegated to second-class citizenship just because one is a mother. If she wants to serve on a jury, she should not have to go to the special effort which the Florida statute requires.

Mr. ERVIN. When I think of the tears mothers shed for us and the prayers they utter for us and the love they extend to us, I am not much impressed by the concern of the Senator from Indiana that it is a great imposition to a mother who would rather serve on a jury than look after her children to require her to dial a telephone and tell the clerk of the court that she thinks she ought to be compelled to serve on a jury even if she has to neglect her children.

Mr. BAYH. I appreciate the Senator from North Carolina yielding to me.

What we are trying to stress in this equal rights amendment is as much symbolic as it is real. It deals not only with statutes like that in Florida but also with the fact that, according to the Supreme Court of the United States, when Hoyt was decided, there were still three States that would not let women serve on juries at all. Today women are doing the same kind of work but receiving significantly less than men. There are still institutions of higher learning which require girl students to score significantly higher on entrance tests before they will let them in. Some States today require women, even if they are the sole support of their children, to get court orders before they can go into business. The amendment deals with this type of problem, our treating women as second-class citizens.

Mr. ERVIN. I would say to the Senator from Indiana that if he objects only to the jury laws of three States, he should work on the State legislatures which enacted those laws to get them to repeal those laws and get them to make women eligible for jury service, instead of advocating a constitutional amendment to drag mothers to the courthouse in legal chains, against their will to the neglect of their children. I submit that such a course of action would be preferred above imposing upon mothers of the other 47 States burdens they deem incompatible with their duty to provide nurture for their small children.

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

Mr. ERVIN. I yield.

Mr. COOK. Will the Senator explain to me, with more than 30 million women in the United States working every day, why a man who is tapped to serve on jury duty receives far less compensation to serve on the jury than he takes home from his work, while the more than 30 million American women who work do not have to be worried about that? They can stay right there, unless they want to take a reduction in their daily salary, and then they can go to the courthouse and say, "I'm a working mother"—or a working woman—"and I want my name on the list; and if you want to call me, go ahead." Otherwise, every man is eligible to serve and must serve, even if he is the one and only breadwinner, and he is asked to serve for $5 a day or $7.50 a day. Yet the 30-odd million women who work in the United States need not have that problem to face.

Mr. ERVIN. I would suggest to the Senator from Kentucky that he ask that question of the President of the National Council of Negro Women, the vice president of the United Farm Workers Organizing Committee, the former Director of the Women's Bureau of the U.S. Department of Labor——

Mr. COOK. I thought the Senator would give me the answer.

Mr. ERVIN. Just a minute—or the executive director of the National Council of Catholic Women, or the former chairman of the California Advisory Commission on the Status of Women, or the general secretary of the National Consumers League, or the former administrator of the Social Rehabilitation Service of the U.S. Department of HEW, or the former member of the President's Commission on the Status of Women, and all the other women whose names I have mentioned as being strong opponents of this proposal.

The ACTING PRESIDENT pro tempore (Mr. METCALF). Under the previous agreement, the time has now arrived to consider the question of agreement to the amendment of the Senator from Alabama (Mr. ALLEN), which was modified, and when reprinted as modified was printed as amendment No. 1047, which the clerk will state.

The assistant legislative clerk read the amendment as follows:

On page 1, line 3, beginning with the word "That" strike out everything down through line 7 and insert in lieu thereof the following: "That the articles set forth in sections 2 and 3 of this joint resolution are proposed as amendments to the Constitution of the United States, and either or both aricles shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after being submitted by the Congress to the States for ratification.".

On page 1, between lines 7 and 8, insert the following:

"SEC. 2. The first article so proposed is the following:".

On page 2, after line 7, insert the following:

"SEC. 3. The second article so proposed is the following:

"ARTICLE —

"A State shall have the absolute right to assign students to the public schools it operates by a freedom of choice system. A freedom of choice system means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races, creeds, and national origins, and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings."

The ACTING PRESIDENT pro tempore. The time for the consideration of this amendment is controlled. Who yields time?

Mr. ALLEN. Mr. President, I yield myself 7 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized for 7 minutes.

Mr. COOK. Mr. President, will the Senator from Alabama yield me 30 seconds?

Mr. ALLEN. I yield.

Mr. COOK. Mr. President, I ask unanimous consent to have printed in the RECORD a list of more than 50 organizations in Government, labor, and lay professional, and international organizations which support the proposed equal rights amendment to the Constitution, and which have complete understanding of the current problem.

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

SUPPORT OF THE PROPOSED EQUAL RIGHTS AMENDMENT TO THE UNITED STATES CONSTITUTION

(Compiled by National Woman's Party)

"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

GOVERNMENTAL

Citizens Advisory Council on the Status of Women (Appointed by President Nixon Aug. 1969).

Task Force on Women's Rights and Responsibilities (Appointed by President Nixon Oct. 1969).

The United States Department of Labor—State of Support made by the Honorable James Day Hodgson, Secretary of Labor, on June 12, 1970.

Women's Bureau of the United States Department of Labor.

Eighty-one Senators and 273 Members of the House have officially sponsored the proposed Equal Rights Amendment in the present Congress (91st). The Senate Subcommittee on Constitutional Amendments reported this amendment favorably on July 28, 1970.

LABOR

American Newspaper Guild—Affiliate of the AFL–CIO.
International Brotherhood of Teamsters.
International Brotherhood of Painters and Allied Trades.
National Association of Railway Business Women.
United Automobile Workers (UAW).

LAY AND PROFESSIONAL (NATIONAL)

American Association of Women Ministers.
American Federal of Soroptimist Clubs.
American Federation of Teachers—Affiliate of the AFL–CIO.
American Medical Women's Association.
American Women's Society of Certified Public Accountants.
American Society of Women Accountants.
Americans for Democratic Action.
Association of American Women Dentists.
B'nai B'rith Women.
Ecumenical Task Force on Women and Religion (Catholic Caucus).
General Federation of Women's Clubs.
Iota Tad Tau Legal Sorority.
Ladies Auxiliary of Veterans of Foreign Wars.
Ladies of the Grand Army of the Republic.
League for American Working Women.
Liberation Movement of Women.
Mary Ball Washington Association of America.
National Association of Colored Women.
National Association of Women Deans and Counselors.
National Association of Women Lawyers.
National Council of Women Chiropractors.
National Education Association (NEA).
National Federation of Business and Professional Women's Clubs, Inc.
National Federation of Republican Women.
National Grange.
National Organization for Women (NOW).
National Woman's Party.
Order of Women Legislators.
Osteopathic Women's National.
Secretarial—Alpha Iota Sorority.
St. Joan's International Alliance—U.S. Section.
The National Council of Women—Affiliated with International Council.
Unitarian Universalist Women's Federation.
Women Investors and Shareholders, Inc.
Women Theologians and the Coalition of American Nuns.
Women's Auxiliary to American Osteopathic Association.
Women's Auxiliary to the National Chiropractic Association.
Women's Christian Temperance Union.
Women's Circle, Woodmen of the World.
Women's Committee on Freedom in the Church—National Association of Laymen.
Women's Equity Action League (WEAL).
Women's International League for Peace and Freedom (Founded by Jane Adams).
Women's Joint Legislative Committee for Equal Rights.

Support of the proposed amendment comes from many sources. The women supporting the proposed Equal Rights Amendment, especially through Democratic and Republican women's groups, comprise a very large part of the women of America.

Mr. ALLEN. Mr. President, in offering the amendment, there is no disposition on the part of the Senator from Alabama to interfere in any way with a final vote on House Joint Resolution 264, the equal-rights-for-women amendment.

In March of last year, the junior Senator from Alabama introduced Senate Joint Resolution 80, which provides for submitting a constitutional amendment that would have the effect of returning the public schools of the Nation to State and local governments. That amendment has reposed in the Subcommittee on Constitutional Amendments for more than 18 months, from March 1969 up to the present time.

Thus, on Thursday last, when amendment No. 1042 was submitted by the junior Senator from Alabama, it was his hope that we would add this amendment to the amendment sought to be submitted by House Joint Resolution 264. It would be an additional amendment to be submitted by the same measure and would in no way supplant or be in lieu of the equal-rights-for-women provision.

There is no need to have 100 separate resolutions in order to submit 100 separate constitutional amendments. It would be possible, theoretically, to submit by the same measure two, four, ten, a dozen, or a hundred proposed constitutional amendments. So there is no disposition on the part of the junior Senator from Alabama to hold up a vote on the main question. He merely seeks to have a vote on this great school issue.

On the last legislative day, Friday of last week, the junior Senator from Alabama offered a modification of his amendment. It has been printed as amendment No. 1047. Actually it is not a separate amendment. It is the same amendment which has been modified. Instead of providing for a complete return of the schools to the States and for supplanting the Federal courts with State courts as the final arbiter of rights, privileges, and immunities of citizens with respect to school matters, it provides for leaving jurisdiction with the Federal courts, with the Supreme Court to be the final arbiter. But the modification does allow a State the absolute right to set up a freedom-of-choice system for the operating and management of its public schools.

Mr. President, the Supreme Court of the United States has not held that freedom of choice plans are, per se, unconstitutional. It has held in at least one case that where the freedom of choice plan did not result in the degree of desegregation, that degree being unspecified, but the degree of desegregation that the Supreme Court thought should take place, then that plan was stricken down. But freedom-of-choice plans as such have not been ruled unconstitutional by the Supreme Court of the United States.

Mr. President, all the amendment would do would be to send out to the States, along with the equal rights for women amendment, an amendment providing for freedom of choice—yes, equal rights—for school children, as well as equal rights for women. The number of States that the consideration of the respective amendments by the States would not be in any way connected. In other words, all States might ratify the equal rights for women amendment and it would become a part of the Constitution, having been ratified. But that would have no effect on the freedom-of-choice amendment. That would have to stand on its own and receive the approval of 38 States.

This is not a sectional issue. It would provide any State in the Union with the right to set up a freedom of choice plan.

We need this amendment in Alabama and the South to allow us to have the same rights, privileges, and immunities in Alabama and the South that are now enjoyed in other sections of the country. So it would take the express authorization of 38 States of the Union for this freedom-of-choice option on the part of the States to become a part of the Constitution. It would not be a sectional matter, it would require a three-fourths majority of the States. It would not require any State to institute a freedom-of-choice plan. It would allow the freedom-of-choice plan, as defined in the modification, to be set up by any State that saw fit so to do. Then the Federal court, with the Supreme Court being the final arbiter, would then have jurisdiction to determine whether in its application a true freedom of choice is being provided.

It would in no way interfere with the jurisdiction or the role of final arbiter of the Supreme Court.

Mr. President, I hope that the amendment will be adopted and that it will become part of House Joint Resolution 264, and that, by a two-thirds vote, both amendments to House Joint Resolution 264 will be submitted by the Congress to the States and that at least 38 of the States will ratify both amendments.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Mr. President, I yield 10 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 10 minutes.

Mr. STENNIS. Mr. President, as one might expect, I am certainly vitally interested in this amendment or anything closely akin to it. I am satisfied, based on the experience of the last several years, this matter, being a political question to the extent it is, the legislative branch is not going to make any clear-cut decision about it for several years to come. I do not think the executive branch of the Government will make a clear-cut decision about it for several years to come, either.

I think the most direct way is for Congress to submit a constitutional amendment and, since it will require ratification by 38 States, let the people of those States through their legislatures be heard on the matter.

This amendment is very simple in that it does not interfere with or restrict the jurisdiction of Federal courts. It merely provides for an amendment to the Constitution, if adopted by 38 States, that would afford a certain amount of freedom of choice with reference to our public school systems.

Mr. President, the end is not in sight on this subject. More must be said and must be done on the subject.

I have referred to the two branches of the Government, and I speak with great respect to the judicial branch. The Supreme Court of the United States has cases before it on this matter. But I do not think it will ever render a decision that carries a judicial enforcement and make it applicable to the States of the East, the North, and the West with anything like the severity with which it is enforced in the South at the present time.

The only real distinction is that for historical reasons our laws have been different. But those laws were only valid

until 1954, and they have been invalid since.

Mr. President, we heard a great deal about this subject several months ago when we had the debate on the matter. The Senate, by an overwhelming vote, called for the uniform application of one school desegregation policy throughout the Nation. A few weeks later, the conference committee—and I speak with all deference to the members of the committee—came back with a report that repudiated that formal vote of the Senate, though not in words. The report said that there was one policy applied uniformly in all regions of the Nation. However, section 2 of the report said that there were two policies, one applied uniformly to dejure segregation and another applied uniformly to de facto segregation.

I do not think it was by chance that very soon thereafter, almost on the same day, the executive branch of the Government announced a similar policy. They came out in writing and said they were going to have two policies, with uniform application of those two policies.

The Supreme Court has had four chances over the past several years to pass on de facto segregation. I pointed out those cases some time in May. I analyzed them at that time. Nothing has been disputed concerning my statement. The Supreme Court has absolutely refused to pass on any case, except those in the South. The Court will not rule on the question of whether so-called de facto segregation is legal or illegal.

Something must be done.

Since we had the matter under consideration before, there has been a recall petition filed in Michigan. I speak of Michigan in no way except in terms of laudation. The people there decided that they did not want busing. They drew up a recall petition against four members of the board. The board reversed its position before election. The people decided that they would go ahead with the election anyway, and voted all four members out. They said, in effect, that they would make an example of them, though the order had already been rescinded.

The State Legislature of California recently passed a law against busing for the purpose of creating racial balance in the schools. The Governor signed that law, just as Governor Rockefeller—another fine Governor, but a so-called liberal—signed a similar law passed by the New York State Legislature.

As far as I know, the Department of Justice has not done a thing in the world to have either of those laws set aside, although a private party did bring a suit in New York and had the law declared unconstitutional by a three-judge Federal court. But constitutional or unconstitutional, for the time being it represents the sentiment of those people in New York, California, and Michigan.

Mr. President, the rights of the parents, black and white, are not respected.

We have here a proposal by the Senator from Alabama that the rule already applied in the other States of the Nation, except in the South, be applied uniformly.

We are not asking for any favoritism. We plead that we be treated, through the amendment of the Senator from Alabama, as the other States are treated.

Mr. President, this is not the first time I have raised this issue. I know of no one who has successfully disputed it. With one exception, there has not been a single case by the Department of HEW or the Department of Justice which has proceeded to judgment outside of the South with reference to de facto segregation. That case was in Ferndale, Mich.

The case had been pending for years. It has been cited as evidence that they are trying to do something about the matter outside the South. The case finally came on for hearing before a hearing examiner who ruled that it was unlawful discrimination. However, they have been unable to get the Supreme Court to say that as yet. They have one single small case. I think there is also a case in New Jersey where the Department of Justice pushed them rather sharply and they agreed to a decree. But no adverse ruling, according to my records, has been applied outside of the South except in Ferndale, Mich.

As I say, this proposed constitutional amendment just makes legal the things that are being done now in these States outside of the South.

Mr. President, the amendment would have to be approved by 38 States. I am not being foolish on this subject. I will not be surprised if we do not get the required vote today.

I say in good faith and in all charity to our friends who represent States outside of our area of the country that if this enforcement ever hits them as it has hit us through mandates of the courts, and if it requires a pattern of conduct in their schools, as it has required in ours, they will come to those of us representing States in the South and ask us to give them support to help pass some kind of a proposed amendment like this.

When the quality of education is literally smothered to death in these other States, as it is now in the South, parents there will rise up and plague anyone who occupies a seat in this Chamber to the extent that he or she will feel moved to do something about it. So this subject is not going to die.

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

Mr. ALLEN. Mr. President, I yield 1 additional minute to the Senator.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 1 additional minute.

Mr. STENNIS. I thank the Senator for extending my time. I will not pursue the matter further now except to emphasize that this amendment does not in any way restrict the jurisdiction or powers of the Federal courts. It really does not change the situation with respect to what is being practiced now in Indiana, Michigan, New York, Pennsylvania, New Jersey, and other States outside the South. That will not be denied. This double standard cannot possibly be defended on the floor of the Senate. The standard for those outside the South is one that they want to keep. No people can live under such a double standard and we will finally come to this amendment.

I thank the Senator.

Mr. ALLEN. Mr. President, I yield 5 minutes to the Senator from South Carolina, who is the cosponsor of the amendment.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, Thomas Jefferson, one of our greatest statesmen, believed that government should not be centralized, but rather should be divided among the States. He said:

> The way to have good and safe government is not to trust it all to one; but to divide it among the many, distributing to every one exactly the functions he is competent to do.
>
> Let the national government be entrusted with the defense of the nation, and its foreign and federal regulations; the state government with the civil rights, laws, police and administration of what concerns the state generally; the counties with the local concerns of the counties and each ward direct the interests within itself.
>
> It is by dividing and subdividing these republics, from the great national one down through all its subordinations, until it ends in the administration of every man's farm and affairs by himself; . . . that all will be done for the best.
>
> What has destroyed liberty and the rights of man in every government which has existed under the sun? The generalizing and concentrating all cares and powers into one body.

This philosophy was embodied in our Constitution in the form of the 10th amendment which reserves to the States all those powers not specifically delegated to the Federal Government.

However, the Federal judiciary, in a series of far-reaching decisions has twisted, shattered, and disregarded the clear meaning of the Constitution. These decisions plainly show that the courts have usurped the authority to legislate. It is elementary that it is the role of the Congress to write the laws and the duty of the courts to apply them as written. This principle applies to the Constitution as well as to statutes passed by Congress.

The amendment we are considering today, which provides that each State shall have sole and exclusive jurisdiction of the organization and administration of all public schools within each State, seeks to return to the individual States that power and authority which is theirs under the Constitution and which has been taken from them by the courts.

The present system of Federal control has caused disruption of our public schools and is cause for great alarm among all conscientious citizens. Every attempt to solve these problems has been struck down by the courts. The State of New York, in an attempt to provide a sound educational system, enacted a law which was a reaffirmation of the equal protection clause of the 14th amendment and was based on the premise that race should not be a factor in pupil assignment. The New York law said in part:

> No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving the equality in attendance . . . of persons of one or more particular race.

The law also provided that no parent or guardian shall be compelled to send their children to any school against their wishes. Furthermore, the law prohibited rezoning school districts for racial purposes.

This law allowed true freedom of choice and left the operation of the public schools to the local boards. While this law was in effect, the schools were operated in an efficient manner with no disruption or controversy. However, in an attempt to further bring the schools under Federal control, a three-judge Federal court held this law unconstitutional. This decision was unreaosnable and totally without legal fundation and is further evidence that the courts are more concerned with the loud cries of civil rights zealots who advocate a total and complete forced mixing of the races, than they are with quality education for our children.

The same set of events have been repeated in State after State throughout our country. To make matters worse, many Federal court decisions conflict with other decisions. Recently, three Federal district judges in Virginia handed down three different decisions concerning school desegregation. While the subject of these decisions was the same, the decisions went in three different directions. This example is not unique but has been replayed time and time again during the last 6 months. Such diversity of opinion and inconsistent action have severely weakened the integrity of our Federal judicial process and caused our people to lose faith in the system. Many of these decisions go much further than the requirements of the Congress or the Constitution.

The Congress has not required busing, yet some Federal judges insist upon massive busing. The Congress has not required a balancing of the races, yet some Federal judges insist upon a racial balance in each school. The Congress has not prohibited a school district from making student assignments on the basis of sex, yet lower Federal court decisions have done this.

Mr. President, in my judgment, the decisions of the Supreme Court are not only ridiculous and outside of the law, but they are totally inconsistent with each other. For example, in 1954 the Supreme Court ruled that students may not be assigned to schools on the basis of race. That is, a school board could not make a white child go to a particular school because he was white, and could not make a black child go to a particular school because he was black. Then, in 1968, the Supreme Court changed its mind and ruled that our local school boards, must assign students to schools on the basis of race. That is exactly what the Supreme Court said you could not do in 1954. If it was unconstitutional to assign students to school on the basis of race in 1954, it must also be unconstitutional to do it in 1968. Yet, the Supreme Court, in its majestic wisdom, held to the contrary.

This inconsistency exists in other areas which the Supreme Court has considered. For example, in the consideration of the first amendment, the Supreme Court took the language found there and interpreted it to mean that our schoolchildren cannot be allowed to bow their heads in a morning prayer. Almost in the same breath, the Supreme Court used this exact language to rule that smut peddlers had a right, under the Constitution, to distribute pornography to these same children.

Those who favor leaving major decisions that affect all Americans in the hands of nine men, are saying that they have no respect or faith in our form of government. Those who would oppose this amendment are telling the people that they, rather than the people, know what is best for the people.

Our form of government allows the people to make the laws, not a select group of judges and bureaucrats.

Mr. President, we are in the midst of a grave crisis. Immediate action should and indeed must be taken to restore the operation and control of our public school system to the people. President Nixon, with the full realization that our school system is disintegrating, has advocated that freedom of choice be implemented in the schools. Under freedom of choice every child may attend any school he or she voluntarily chooses. Nothing could be more fair or more just. The freedom of choice concept is based on one of the principles which is at the very foundation of this great country. That principle is that every person of every race is guaranteed the God-given right to choose and pursue his or her own individual course of action. However, after President Nixon stated that he supported freedom of choice, the Supreme Court virtually nullified the freedom of choice concept.

On March 24, 1970, in an atttempt to undo as much as possible the damage done by the Supreme Court, President Nixon announced that he favored the neighborhood school plan and said that he was opposed to forced busing to bring about a racial balance. This time, the long arm of the Federal Establishment came into play through the Department of Health, Education, and Welfare. This Federal agency refused to approve a number of school plans which were based on the neighborhood school concept. It is evident that HEW has certain personnel who are more concerned with imposing their personnel ideas on the Nation than with quality education for our children. They are going beyond the requirements of the law and are doing a great disservice to their country.

Mr. President, it is evident that our public school system is being destroyed by the Federal Establishment. Fortunately, we have before us today an amendment, which, if approved by the Congress, will provide the means for a workable public school system. Without this amendment, the prospects for the continued public education for our children is dim.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I yield myself 5 minutes.

Mr. President, the Senator from Mississippi has left the Chamber, but even in his absence, I would like to say for the record that some of the things the Senator from Mississippi has said over the last year have served an exemplary purpose. They have stirred the conscience of some of us who have long been deeply concerned over equal educational opportunity for all children throughout the country.

In a way, the amendment of our distinguished colleague, the Senator from Alabama (Mr. ALLEN), attempts to reawaken this stimulation of conscience. Some of the information made available by our colleague, the Senator from Mississippi, shows that in some areas we are applying two different standards.

The distinguished Presiding Officer, the Senator from Virginia (Mr. SPONG), has also made significant contributions and pointed out that we are applying two sets of rules. It has been pointed out that this has been the case in some areas of my home State. Frankly, I think it is wrong. I do not intend to condone second-class treatment of black children in my State any more than I would condone the second-class treatment of black children in any other State.

I for one feel we need to study the way educational opportunity is made available in all areas of our country. If there are places in the North where black, or brown, or yellow, or poor children are being denied full educational opportunity, as I personally feel there must be, then I think we need to rectify this serious grievance. We need to apply the same rule, north and south, east and west.

From a practical standpoint, I think, the Senator from Indiana needs to point out that we are now in the process of proposing a constitutional amendment concerning equal rights for both sexes.

Mr. STENNIS. Mr. President, before the Senator leaves that point, will he yield to me?

Mr. BAYH. I am glad to yield.

Mr. STENNIS. This is not a personal question. I have figures here that show a map of the operations in the Senator's State, where, for instance, we have a record of 49 schools where the Negro enrollment is 90 to 100 percent of the total enrollments, and 40 schools where the enrollment is 99 and 100 percent Negro. There are another 28 schools with a white enrollment of from 90.9 percent to 98.8 percent, and there are 869 Negroes attending these 28 schools, or about 4 percent of the enrollment.

My question is this. I am not blaming the Senator for this, but what have the Governors done, what have the State legislators done, and, if I may say, what has the Senator from Indiana done to try to do something to change this by law—through State law, now? I submit that just to say one disapproves of it is not enough. So is there more than that that has been done?

Mr. BAYH. Before the Senator from Mississippi came on the floor, I paid him tribute for the fact that he had pricked the conscience of some of us who live in the North. I also pointed out some misgivings of my own. We tend to be a bit hypocritical.

In all deference to the Senator from Mississippi, I must say that the specific figures he now quotes really do not go to the nub of the discrimination——

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

Mr. BAYH. I yield myself 5 more minutes.

I publicly suggested, in the hearings of the Select Committee on Equal Educational Opportunity held under the able leadership of our colleague from Minnesota, that some school systems go beyond the traditional distinction between de jure and de facto. I really do not have time to discuss that particular point at this time, but I think we have some examples in Indiana where, despite the general adherence to the neighborhood school concept, black children have been bused past white schools and white children have been bused past black schools. That is wrong. I do not condone it. I have supported on every occasion the principle embodied in the civil rights laws. While I was in the State legislature I was the principal sponsor of such a proposal. We passed a pretty good bill. It was not as good as I liked, because the opposition managed to weaken it somewhat. But we moved in that direction.

In answer to one of the Senator's questions, I would hazard a guess that we have not done enough. But the point I make right now is that a suggestion has been made to amend the Constitution with a measure on which hearings have not even been held. There has not been one word of expert testimony before the Constitutional Amendments Subcommittee on this issue at all. I think it would be very irresponsible for us to put this type of amendment in the Constitution without really exploring its full ramifications.

I say now what I have already said twice. To the degree that we can find we are applying one set of standards in the South and another set of standards in the North, we should stop it. I said that just before the Senator from Mississippi walked through the door. To come here on the floor with a constitutional amendment on which we have had no hearings at all is not pursuing the responsible approach that the Senator from Indiana, at least, believes we should pursue as far as a constitutional amendment is concerned.

One can argue about the merits of the amendment to House Joint Resolution 264 and what it will do to the proposed constitutional amendment, whether it will enhance its chances or decrease its chances. But we have before us now an amendment which, to my knowledge, has never been fully studied, as I think any constitutional amendment should be studied.

Mr. STENNIS. Mr. President, I thank the Senator for yielding to me. I want to suggest that the legislative branch, the executive branch, and the judicial branch already have opinions on this matter. My idea was that it is an amendment that we could submit and leave to the State legislatures to decide.

Mr. BAYH. I appreciate the Senator's interest, and I do pay tribute to him for the fact that he jolted some of us into saying, "Wait a minute. Let us look in our own backyard. Let us not only look over the fence." I think it is high time we did. I think, with the help he has given us and with the help the Senator from Virginia has given us, we can do something about this. But I think if we look at the legislative process behind this particular amendment to House Joint Resolution 264 and compare it with the normal process followed for the normal constitutional amendment, the approach has not been as thorough as at least the Senator from Indiana would like to see followed.

Some rather broad arguments have been made about the impact of this particular amendment on the educational policy of this country. It has been suggested by the Senator from Mississippi, and I think probably by my friend from Alabama, that this amendment does not in any way change the authority of the Federal courts, as far as our schools are concerned. I must say that men of good faith can read language and come to different conclusions, but it seems to me some persons, including the Senator from Indiana, could come to a different conclusion. This proposed constitutional amendment starts out by saying that the States shall have the absolute right to assign students to the public schools—absolute right.

Mr. President, I do not know how many different definitions you can put on "absolute."

"Absolute" would tend to preclude to the ultimate degree any other force, any other power, any other branch, any other level of government from in any way interfering with the State's determination of what it thought was right.

As I have studied this matter, I have been deeply concerned that an amendment such as this would indeed preclude the Federal courts from intervening in any way. It would prohibit them in an absolute manner, according to the exact words of the proposed amendment itself.

Second, I think we must point out that there is another clause that could be a source of real trouble. In the last part of the second sentence, which is a rather long sentence, there appear the following words:

> And in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings.

What does that mean? What could it mean, Mr. President? I think that the words "educational standings" would permit certain tests to be given to students, and the use of the results of such tests to discriminate on a color basis.

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

Mr. BAYH. I am happy to yield.

Mr. ALLEN. That is the very point, I might suggest to the distinguished Senator from Indiana, where the Federal court would come in and have jurisdiction. If such tests were being used for the purpose of discriminating, then the Federal court would have jurisdiction.

In other words, the amendment does not give the States the absolute right to do anything and everything they want to with respect to schools. The Senator did not finish reading the sentence, I do not believe. The State has the absolute right to assign students to the public schools it operates by a freedom-of-choice system. That is what the States are given authority to do.

The PRESIDING OFFICER (Mr. SPONG). The Senator's time has expired.

Mr. BAYH. Mr. President, I yield myself 4 additional minutes, and yield to the Senator from Alabama.

Mr. ALLEN. I appreciate the fact that the Senator from Indiana is yielding time.

In answer to the comment of the distinguished Senator from Indiana that he saw no place for the Federal courts to have jurisdiction of any question, if this amendment were adopted——

Mr. BAYH. Mr. President, may I ask my friend from Alabama—I have read this article. It is a seemingly simple article. It starts out by saying:

A State shall have the absolute right to assign students to the public schools it operates by a freedom-of-choice system.

In going down to the last part of that sentence that concerned me, I do not see anything that says that the absolute right is permitted the Federal court to do thus and so. It says the State shall have the absolute right.

Mr. ALLEN. Yes; that is true, to operate a freedom-of-choice system.

In other words, if the State did not operate a bona fide freedom-of-choice system, if the free choice were denied to any student, there the Federal Government would have jurisdiction.

All the States are permitted to do is operate a bona fide freedom-of-choice plan, and if the plan is not a bona fide freedom-of-choice plan, then it would violate a student's rights under the Constitution, and at that point the Federal court's jurisdiction could be invoked to guarantee that right.

Mr. BAYH. I certainly respect the sincerity of my colleague from Alabama. But I suggest, after reading the definition of the freedom-of-choice system, that the definition is so broad and so ambiguous that I really do not know how a court could read it.

What really concerns me is the last two words, "educational standings." This has been one of the vehicles used repeatedly to discriminate and circumvent Federal court orders. Certain tests have been given in a discriminatory manner and graded in a discriminatory manner, and no black students passed those tests. They were all herded off into one classroom, and the white students were all herded off into another. Such a procedure might fall under the definition of the Senator from Alabama, which prevents the courts from intervening because of the absolute rights given to the States to assign students.

I think we are asking for trouble, to put this type of article into the Constitution, particularly at this moment in history when we are trying to find out how to deal with the problem, with the select committee headed by our distinguished colleague from Minnesota (Mr. MONDALE).

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAYH. I yield myself 2 more minutes.

We are trying to find out how we can deal with some of the distinctions between de jure and de facto, what impact this has on students, and how we can reconcile the strong feelings we have

that there should not be discrimination in schools, on the one hand, and on the other that the neighborhood school is a vital part of our educational system in America.

These feelings are irreconcilable, in some instances, and we are trying to find out how to deal with them by statute. To come along and put something like this into the Constitution at this moment would, I think, be just the wrong way to proceed.

Mr. ALLEN. Mr. President, I submit to the Senator from Indiana that all the amendment does is give the State the absolute right to operate a freedom of choice system for its public schools. Then the amendment goes on and defines a freedom of choice system as being one that is open to students of all races, creeds, and national origins, and it does permit assignment according to their ages and educational standings.

But that is the very place where the Federal court would come in, if such plans were used as devices to prevent the exercise of free choice. So if the State did not provide a bona fide freedom of choice, if the free choice of the school were denied to a student, then he could come in and invoke the jurisdiction of the Federal court, and there is where the Federal courts would have jurisdiction. The distinguished Senator from Indiana says he is having difficulty finding the place for the jurisdiction of the Federal court. That was the purpose of the explanation I have given at this time.

Mr. BAYH. I appreciate the explanation of the Senator from Alabama.

I still must say that I think we are really ignoring the fact that we take away a right. I am concerned that we are not at all specific; in fact, there is no specific reference to when that right may be reapplied or reexerted by the Federal court at all. We are opening a Pandora's box at the end when we say "among the public schools and classes available for the instruction of students of their ages and educational standards."

This permits the various school systems, as they establish the freedom of choice system, to involve themselves in all sorts of discriminatory practices, practices that have been used by some school corporations in the past directly to circumvent Federal courts orders.

I yield 3 minutes to the Senator from Michigan.

Mr. GRIFFIN. I thank the distinguished Senator from Indiana for yielding.

Mr. President, if it were in order under the unanimous-consent agreement—and unfortunately it is not—it seems to the junior Senator from Michigan that it would be most appropriate for a motion to be made to refer this proposal to the Committee on the Judiciary for hearings and the kind of study that an amendment to the Constitution should have before it is taken up on the floor of the Senate.

I join the Senator from Indiana in paying tribute to the Senator from Mississippi (Mr. STENNIS) for the service he has performed in focusing the attention of the Senate and the country upon some of the inequities, which exist. I can understand the appeal that an amendment such as this would have for many Senators.

Until I inspected the language of this proposal today, I do not believe I have ever known of a bill or amendment which sought to establish an "absolute right." With all due respect to the sponsor, I do not believe there can be such a thing as an "absolute right." My rights as a citizen are necessarily subject to the condition that they not infringe upon the rights of others. Any amendment to the Constitution must necessarily be interpreted in the light of the other provisions of the Constitution. So it occurs to me the use of the term "absolute right" is very unusual, and it is not clear what is meant by the term.

I would point out that so-called freedom of choice plans are not unconstitutional per se under the decisions of the Supreme Court. Only a freedom of choice plan designed for the purpose of circumventing the guarantees of the Constitution has been struck down by the decisions of the Supreme Court.

The meaning of this amendment is not clear. I am not at all certain how far it reaches. But I do not think it will achieve the purposes even of the sponsor of the amendment, I say with all due respect.

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

Mr. BAYH. I yield 2 additional minutes to the Senator.

Mr. GRIFFIN. Mr. President, when an amendment of this nature is offered, without the prior study and hearings it deserves, the Senate is left with no responsible choice but to reject it. Accordingly, I shall have to vote against the amendment, and I hope a majority of the Senate will do the same.

The PRESIDING OFFICER. Who yields time?

Mr. GURNEY. Mr. President, will the Senator from Indiana yield me 1 minute?

Mr. BAYH. I yield 2 minutes to the Senator from Colorado.

Mr. ALLOTT. Mr. President, we have been confronted with this rather involved amendment at a relatively late hour. Frankly, I was not aware that a change had been made in it until I came to the Chamber.

The amendment presents this Senator with some very difficult problems. Believing in a genuine freedom of choice system myself, one in which a person really has a freedom of choice, this amendment, on the surface, would seem very appealing. However, it says that the States shall have the absolute right to assign students. That really rewrites the Constitution of the State of Colorado by which we came into the Union. Our State—as I recall the Constitution, not having had a chance to restudy it in the last few minutes—has no right to assign students anywhere. The only people who have a right to assign students are the school districts, and the respective school districts, I think, can assign them; but I cannot see how, under the structure in our particular State—and this must be true of other States—our State would have the right, and particularly an absolute right.

The Senator from Alabama usually has very good reasons and very good thinking in the amendments he offers, and they usually have much to commend them. But I must say that in reading the entire amendment, I cannot see exactly what it means, and I therefore will not be able to support it.

Mr. GURNEY. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Alabama has 4 minutes remaining, and the time of the Senator from Indiana has expired.

Mr. ALLEN. I yield 1 minute to the Senator from Florida.

Mr. GURNEY. I apreciate the courtesy of the Senator from Alabama.

Ordinarily, I would support wholeheartedly the amendment of the Senator from Alabama. He and I have been together, I think, on almost all school matters, and I support the idea of his amendment. But I did want to explain at this time that I would not be able to vote for it or support it at this time, solely because I think that Senate Joint Resolution 264 should stand on its own feet and should be considered by itself, as a separate item of business, and that the resolution of the Senator from Alabama also should be considered as a separate item of business. If the Senator from Alabama intends to submit his amendment at any other time as an amendment to the Constitution or in any other fashion, I will wholeheartedly support him.

I thank the Senator for his courtesy.

Mr. NELSON. Mr. President, over 50 years ago, thousands of women across the Nation were engaged in a political fight to secure the right to vote. My mother was among those women.

They won the power of the ballot in the 19th amendment to the Constitution and, with that, American women thought they were well on the way to eliminating discrimination based on sex.

Any objective evaluation of the current situation must conclude that the power of the ballot box has not solved the problem. In fact, in many ways there is more discrimination now than there was then.

A half century ago the country was rural, leisure time was limited, society lacked mobility, and most jobs were unskilled manual labor. Women who wanted employment became teachers or nurses, if they desired to work in a professional field. About the only other employment opportunities open to them were clerical, stenographic, domestic, and miscellaneous unskilled labor positions.

Vast changes in the past half century have created a demand for a great variety of talents and skills. The number of women, both single and married, who wish to enter the job market has been expanding rapidly for more than a quarter cenutry.

However, women find widespread discrimination in getting admitted to professional schools to attain the kind of education they must have, and they find discrimination in the jobs they are offered when they finish school. Once employed, they find their opportunities for advancement limited.

The discrimination extends from law firms to educational institutions, Government jobs of all kinds, and to all private and nonprofit organizations.

It is a widely followed custom that certain jobs are earmarked for women. There is even a common descriptive term, "woman's work." The best positions—supervisors, managers, and executives, are for men. For example, although the American school system has more women than men teachers, the men outnumber the women in reaching the highest positions.

A 1968 study of the Federal Government showed that of the 667,234 women employed at that time, 80 percent were in the bottom six grades, and the majority worked in clerical and lower-grade technician jobs. Only 1 percent of the women held jobs in the top six grades.

Equally discriminatory is the question of salary. Where women perform the same or equivalent work as men, it is still a common practice to pay them a lower salary.

In 1968, women working full-time earned, on the average, 58 percent as much as their male counterparts. For each specific field, the figures are similar. In sales work, the median income for women was $3,461, and for men, it was $7,351.

Overall, 8 percent of the men holding jobs in the country earned salaries of $15,000 or more, as compared with 0.4 percent of the women working full-time. At the other end of the scale, 20 percent of the women workers earned below $3,000, while only 7.5 percent of the men were in this category.

Even with full equality under the law, the economic forms of discrimination will not soon come to end. But like achieving woman suffrage, achieving legal equality will be another great advance in the right direction.

Equal rights is a concept that is not limited to one issue or one class of people. It is universal, and it means allowing all human beings, men and women alike, the best possible chance to guide their own destinies and to choose a way of life they find personally fulfilling.

We now have an opportunity, in the equal rights for women amendment, to provide the women of this Nation with an effective means of protecting their legal rights and opposing still-existing forms of legal discrimination.

In principal, the Constitution guarantees equal rights to all citizens as a birthright. Therefore, such an amendment should not be necessary. But experience has shown that equal rights have never been a reality, and that the courts can be agonizingly slow in extending even the clear-cut provisions of the 14th amendment to the people for whom they were intended.

In my opinion, this amendment is necessary and long overdue, in guaranteeing the women of this country full citizenship and full participation in modern life which has been so affected by sweeping technological and social changes.

I strongly support House Joint Resolution 264, and I would hope that the Senate will pass the measure without amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SPONG (when his name was called). On this vote I have a pair with the distinguished Senator from Minnesota (Mr. MONDALE). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

Mr. 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 Montana (Mr. MANSFIELD), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that, if present and voting, the senior Senator from Rhode Island (Mr. PASTORE), the junior Senator from Rhode Island (Mr. PELL), 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 Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Maryland (Mr. MATHIAS), the Senator from California (Mr. MURPHY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Utah (Mr. BENNETT) is detained on official business.

If present and voting, the Senator from New York (Mr. GOODELL), the Senator from South Dakota (Mr. MUNDT), the Senator from Illinois (Mr. SMITH), and the Senator from California (Mr. MURPHY) would each vote "nay."

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Maryland (Mr. MATHIAS). If present and voting, the Senator from Texas would vote "yea" and the Senator from Maryland would vote "nay."

The result was announced—yeas 17, nays 57, as follows:

[No. 374 Leg.]

YEAS—17

Allen	Fulbright	Russell
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Hollings	Stennis
Eastland	Jordan, N.C.	Talmadge
Ellender	Long	Thurmond
Ervin	McClellan	

NAYS—57

Allott	Cooper	Hansen
Anderson	Cotton	Hart
Baker	Cranston	Hatfield
Bayh	Curtis	Hruska
Bellmon	Dodd	Hughes
Bible	Dole	Inouye
Boggs	Dominick	Jackson
Brooke	Eagleton	Javits
Burdick	Fannin	Jordan, Idaho
Case	Gravel	Magnuson
Church	Griffin	McGovern
Cook	Gurney	McIntyre
Metcalf	Proxmire	Stevens
Miller	Randolph	Symington
Montoya	Ribicoff	Tydings
Muskie	Saxbe	Williams, N.J.
Nelson	Schweiker	Williams, Del.
Pearson	Scott	Young, N. Dak.
Percy	Smith, Maine	Young, Ohio

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Spong, for.

NOT VOTING—25

Aiken	Kennedy	Packwood
Bennett	Mansfield	Pastore
Cannon	Mathias	Pell
Fong	McCarthy	Prouty
Goldwater	McGee	Smith, Ill.
Goodell	Mondale	Tower
Gore	Moss	Yarborough
Harris	Mundt	
Hartke	Murphy	

So Mr. ALLEN's amendment (No. 1047) was rejected.

Mr. BAYH. Mr. President, I move that the Senate reconsider the vote by which the amendment was rejected.

Mr. GRIFFIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMPROVEMENT OF VETERANS' ADMINISTRATION PROGRAM OF SHARING SPECIALIZED MEDICAL RESOURCES

Mr. CRANSTON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9634.

The PRESIDING OFFICER (Mr. SPONG) laid before the Senate the message from the House of Representatives as follows:

Resolved, That the House agree to the amendments of the Senate numbered 1, 3, and 4 to the bill (H.R. 9634) to amend title 38 of the United States Code in order to improve and make more effective the Veterans' Administration program of sharing specialized medical resources.

Resolved, That the House concur in the amendment of the Senate numbered 2 to the aforesaid bill, with the following

AMENDMENTS TO SENATE AMENDMENTS

In lieu of the matter proposed in the amendment of the Senate numbered 2 to the aforesaid bill, insert:

SEC. 2. (a) Section 4107(a) of title 38, United States Code, is amended—

(1) by striking out the comma immediately after "Chief Medical Director" and inserting in lieu thereof "and";

(2) by striking out "and Associate Deputy Chief Medical Director,"; and

(3) by inserting immediately below the heading "Section 4103 Schedule" the following:

"Associate Deputy Chief Medical Director, $36,000.".

(b) Section 103(c) of the Act of November 7, 1966, entitled "An Act to amend title 38 of the United States Code to clarify, improve, and add additional programs relating to the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes" is hereby repealed.

Resolved, That the House concur in the amendment of the Senate to the title of the aforesaid bill, with the following

AMENDMENT

In lieu of the matter proposed to be inserted by the Senate amendment to the title of the bill, insert the following: "An Act to amend title 38 of the United States Code in order to improve and make more effective the Veterans' Administration program of sharing specialized medical resources, and for other purposes."

Mr. CRANSTON. Mr. President, in its action of May 4, 1970, the House accepted all of the Senate's October 21, 1969, amendments with the exception of section 2 which would have given the VA special authority to provide for central administration of pay, leave, and other personnel procedures with respect to residents and interns serving shared or rotating residencies or internships. Unfortunately, the House has adamantly refused to accept this amendment, which I believe is essentially technical, and which the administration originally proposed. I do not believe, however, that the Senate should insist on its amendment at this late stage in the Congress to the possible jeopardy of the rest of the provisions in the bill now in agreement between the bodies.

In lieu of the Senate version of secton 2 of the bill, the House has proposed an amendment to section 4107(a) of title 38, United States Code, regarding compensation of high officials of the VA's Department of Medicine and Surgery. Specifically, the House amendment sets the salary of the Associate Deputy Chief Medical Director at $36,000 and repeals the statutory provision which presently sets that salary at $33,495. The change has been requested by the Veterans' Administration and should afford them more flexibility in filling this No. 3 VA medicine position.

Mr. President, I move that the Senate agree to the amendment of the House to the Senate amendment No. 2 to the bill.

The motion was agreed to.

Mr. CRANSTON. Mr. President, I move that the Senate agree to the amendment of the House to the Senate amendment to the title of the bill.

The motion was agreed to.

HOSPITAL CARE OF CERTAIN VETERANS

Mr. CRANSTON. Mr. President, I shall shortly move that the chair lay before the Senate a message of the House on amendments to H.R. 693, an "act to amend title 38 of the United States Code to provide that veterans who are 72 years of age or older shall be deemed to be unable to defray the expenses of necessary hospital or domiciliary care, and for other purposes."

Mr. President, the action I shall propose that the Senate take on this bill has been cleared with the minority, and I know of no objection to it. It has been worked out on a staff level with the Veterans' Affairs Committee of the other body after informal discussions and technical consultation with Veterans' Administration officials. There is every reason to believe that the action I propose will be acceptable to the other body.

The basic matter in disagreement between the two Houses has been section 1 of the bill dealing with the exclusion of certain persons from having to take the oath of inability to pay hospital or domiciliary expenses. This oath is statutorily required for admission of veterans with non-service-connected conditions to VA hospitals and domiciliaries on a bed available basis. Veterans with service-connected conditions are, of course, admitted as of right without regard to their ability to pay.

The version originally passed by the House would have exempted from taking the oath only those non-service-connected veterans who are 72 years of age or older. Based upon 1969—the latest available—data regarding hospital discharges, we now find that the House age test would benefit only some 80,000 veterans a year. It would not have affected veterans between 65 and 72 even though all veterans over 65 years of age are deemed by law to be totally and permanently disabled for purposes of receiving non-service-connected pensions. Thus, the Labor and Public Welfare Committee recommended, and the Senate agreed, on October 21, that the bill be amended to exempt from the so-called pauper's oath any veteran, regardless of age, who was in receipt of a VA pension; that is, veterans with established financial need who are in fact, or are already deemed by statute because of age to be, totally and permanently disabled.

Using the 1969 hospital discharge figures, we find that the pension test in the Senate bill would exempt from the oath requirement almost 187,000 nonservice-connected veterans receiving pension and that the pension test would have failed to cover only about 16,300 nonservice-connected veterans 72 years of age or older who would have been exempted by the House version.

On May 4, 1970, the House returned the bill to the Senate disagreeing to the Senate version of the bill, except that it concurred in one technical amendment.

Mr. President, after extensive staff discussion on this disputed question with Veterans' Administration officials and between our Veterans' Affairs Subcommittee and the House Veterans' Affairs Committee, we have developed a new analysis of the situation. The focus on the oath, itself, has, I think, obscured what we are really dealing with: That is, the eligibility requirements for admission of nonservice-connected veterans to VA hospitals and domiciliaries. Under the present statutory requirements, a nonservice-connected veteran in order to be admitted to a VA hospital or domiciliary must be "unable to defray the expenses of necessary—care—38 U.S.C. 610(a)(1)(B) and (b)(2). However, the law makes the veterans' oath of inability to pay conclusive on the question of financial need, and no further needs test is applied—38 U.S.C. 622. Thus, the real question is whether or not there should be a requirement of financial need since the only other present requirements are that the nonservice-connected veteran actually require hospital or domiciliary care and that a bed be available for him.

The committee view on the financial need question was that the means test should not be abandoned arbitrarily as it would be on a cutoff at age 72. Thus, the committee approach was to eliminate any further financial means test for those who had already been determined to meet the means requirements for pension purposes. We still believe that this revision should be made, and the motions I shall propose will leave intact the October 21 Senate amendment removing the oath requirement for admission to VA hospitals and domiciliaries of those nonservice-connected war veterans, regardless of age, who are in receipt of pension.

More fundamentally, however, we have reconsidered the financial means requirement in the context of the existing medicare structure under title XIX of the Social Security Act. Our information is that virtually every veteran aged 65 or older is eligible for medicare benefits. In addition, many of these same veterans are presently eligible for VA hospital or domiciliary care by virtue of their inability to defray the necessary expenses of such care. The VA per diem cost in a general surgical and medical hospital is $52 with an average length of stay of 20 days. In a comparable community hospital, the average per diem cost is—at the lowest possible estimate—$78 with the same average length of stay, and in addition, there is an average additional charge per case of $500 for cases involving a surgeon and anesthesiologist, 63 percent and $100 for those involving only a general practitioner, 27 percent. These services are already covered in the VA's $52 per diem.

The VA estimates that if all veterans 65 or older were eligible for admission to VA hospitals without regard to financial means, the increased workload would be 210,000 days of care for a full fiscal year 1971. This increase in days of hospital care for fiscal year 1971 would represent an increase of only 575 in the average daily census in VA hospitals nationwide. When measured against the total estimated operating beds for fiscal year 1971 of 101,326—an increase of 1,211 over fiscal year 1970—and 101,913 for fiscal year 1972—an increase of an additional 587 operating beds—it seems clear that the VA hospital system would have no difficulty absorbing such an increase.

Most significantly, however, is the very substantial estimated savings to the Federal Government in terms of medicare benefits not paid on behalf of the veterans involved in the 210,000 additional hospital care days. This savings of Federal dollars is figured on an average length of stay of 20 days at $78 per day in community hospitals with additional charges for surgeons, anesthesiologists, and general practitioners, and I ask unanimous consent, Mr. President, that a table showing the basis for computing the savings be printed in the RECORD at this point.

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

MEDICARE	
210,000 hospital days at $78/day	$16,380,000
Surgeon, Anesthesiologist and GP	3,392,000
	19,972,000
$50 Medicare deductible not paid by Federal Government	(−)525,000
	19,447,000
VA	
210,000 GM&S hospital days at $52/day	(−)10,920,000
Savings	8,527,000

Mr. CRANSTON. Thus, Mr. President, assuming that in the vast majority of cases the medicare 90 days per year hospital care limit would not be exceeded—this is a fair assumption since the VA's median length of stay for veterans 65 or older is about 20 days—the Federal Government would save $8.5 million on a full fiscal year 1971 basis. I should point out that these estimates are based only on VA general hospital workload increases since the VA does not contemplate that there would be any appreciable increase in neuropsychiatric workloads. This is because the vast majority of veterans aged 65 and older who are neuropsychiatric patients are hospitalized for psychosis and are already in long-term care facilities.

Mr. President, the so-called pauper's oath is clearly an anachronism for any American 65 or older who under medicare, with a very few exceptions, is already entitled to Federal hospitalization benefits without regard to his financial means. Relieving from the oath requirement our veterans presently required to take the oath is, therefore, fully consistent with the trend in Federal involvement in provision of health services and would give our elderly veterans a dignity and self-respect to which they are fully entiled. Most particularly, the revision I am proposing would be of potential benefit to our approximately 1.5 million World War I veterans whose average age is about 75 years already and who have never been provided VA benefits comparable to benefits of more recent wars or the Spanish American War, as well as to approximately 1.3 million World War II veterans who are or will shortly be 65 years or older.

Mr. President, one other matter that has been in dispute is the House provision to give eligibility for VA hospital care regardless of financial need to Mexican border veterans—those who served on the Mexican border between May 9, 1916, and April 6, 1917. The Senate's objections to this provision in the context of the existing law was well stated on page 2 of the Senate report as follows:

Section 4 of the House-passed bill was struck from the bill because the committee did not find sufficient justification for extending to veterans of active duty in the Mexican border service full hospital and outpatient medical care in connection with any non-service-connected disability regardless of their economic status. Since 1900, U.S. forces have been involved in a number of other campaigns and no similar benefits have ever been extended to veterans of those campaigns.

The 65 and older eligibility provision I am proposing that the Senate adopt would cover Mexican border veterans as well as any other peacetime or wartime veteran who had attained that age regardless of when he served and thus would meet the objection based on equity that I just quoted from our committee report.

Finally, for the record, I wish to note that the Senate report also recommended revision of several VA practices with respect to admissions of nonservice-connected veterans to VA hospitals and domiciliaries. I am pleased to report to the Senate that the Administrator of Veterans' Affairs has made a number of decisions based on our committee recommendations so that under revised VA procedure: First, veterans 65 or older no longer, in order to gain admission to a VA hospital or domiciliary, need complete a detailed financial questionnaire, regardless of whether they already receive a VA pension; and second, the oath of inability to defray necessary expenses—on the VA Form 10–P–10—is no longer required to be notarized.

In conclusion, Mr. President, the action which I am about to propose that the Senate take with respect to H.R. 693 would alter the eligibility requirements for admission of veterans with nonservice-connected disabilities to VA hospitals so that any veteran (of active military service discharge under conditions other than dishonorable) who is 65 years or older, as well as any war veteran under 65 years of age who is in receipt of a VA pension—those who are totally and permanently disabled—would be eligible for admission on a bed available basis. That is what the action I am proposing would accomplish. But, I wish to make perfectly clear also, Mr. President, two effects which would not be a result of the motions I am about to make.

First, no veteran 65 or older or in receipt of pension would be required to seek hospitalization in a VA hospital rather than use his medicare entitlement in a community hospital. All my proposal does is provide such veterans with the option of seeking VA hospitalization if they wish.

Second, this proposal would not have the effect of depriving any veteran with a service-connected disability of his entitlement to hospitalization and medical services. Such service-connected veterans would continue to be entitled to admission to VA hospitals on a first priority basis and be entitled, if a bed is not immediately available for them, to hospitalization in a nearby community hospital at VA expense until a VA bed becomes available.

Mr. President, the real burden of the action I shall propose is to fill unused VA hospital beds; to make the maximum use of the resources of our 166 VA hospitals for the greatest benefit of those they are intended to serve—the veterans of our Nation.

Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 693.

The PRESIDING OFFICER (Mr. SPONG) laid before the Senate the amendment of the House of Representatives to the amendment of the Senate No. 2 to the bill (H.R. 693) to amend title 38 of the United States Code to provide that veterans who are 72 years of age or older shall be deemed to be unable to defray the expenses of necessary hospital or domiciliary care, and for other purposes, which were that the House concurred in the amendment of the Senate No. 2 to the aforesaid bill, with the following amendments to Senate amendment:

On page 2, line 1 of the Senate engrossed amendments, strike out "2", and insert "3".

Page 2, line 1, of the Senate engrossed amendments, strike out "16", and insert "2".

Page 2, line 2, of the Senate engrossed amendments strike out "on page 3".

Resolved, That the House disagree to the amendment of the Senate to the title of the aforesaid bill.

Mr. CRANSTON. Mr. President, I move that the Senate insist on its amendment No. 1 to the bill.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from California.

The motion was agreed to.

Mr. CRANSTON. Mr. President, I move that the Senate agree to the House amendment to the Senate amendment No. 2 with an amendment as follows:

In lieu of the matter proposed by the House amendment to the Senate amendment insert the following:

On page 2 of the Senate engrossed amendments, strike out lines 1 and 2, and insert in lieu thereof the following:

On page 2 of the House engrossed bill, beginning with the word "served" in line 23, strike out all down through line 16 on page 3, and insert in lieu thereof the following: "is sixty-five years of age or older."

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from California.

The motion was agreed to.

Mr. CRANSTON. Mr. President, I move that the Senate recede from its amendment to the title of the bill.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from California.

The motion was agreed to.

ORGANIZED CRIME CONTROL ACT OF 1970

Mr. McCLELLAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 30.

The PRESIDING OFFICER (Mr. SPARKMAN) laid before the Senate the amendment of the House of Representatives to the bill (S. 30) relating to the control of organized crime in the United States which was to strike out all after the enacting clause, and insert:

That this Act may be cited as the "Organized Crime Control Act of 1970."

STATEMENT OF FINDINGS AND PURPOSE

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually crains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the leagly admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of

those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

TITLE I—SPECIAL GRAND JURY

SEC. 101. (a) Title 18, United States Code, is amended by adding immediately after chapter 215 the following new chapter:

"Chapter 216.—SPECIAL GRAND JURY

"Sec.
"3331. Summoning and term.
"3332. Powers and duties.
"3333. Reports.
"3334. General provisions.

"§ 3331. Summoning and term

"(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term or any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

"(b) If a district court within any judicial circuit fails to extend the term of a special grand jury or enters an order for the discharge of such grand jury before such grand jury determines that it has completed its business, the grand jury, upon the affirmative vote of a majority of its members, may apply to the chief judge of the circuit for an order for the continuance of the term of the grand jury. Upon the making of such an application by the grand jury, the term thereof shall continue until the entry upon such application by the chief judge of the circuit of an appropriate order. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

"§ 3332. Powers and duties

"(a) It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

"(b) Whenever the district court determines that the volume of business of the special grand jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.

"§ 3333. Reports

"(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—

"(1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or

"(2) regarding organized crime conditions in the district.

"(b) The court to which such report is submitted shall examine it and the minutes of the special grand jury and, except as otherwise provided in subsections (c) and (d) of this section, shall make an order accepting and filing such report as a public record only if the court is satisfied that it complies with the provisions of subsection (a) of this section and that—

"(1) the report is based upon facts revealed in the course of an investigation authorized by subsection (a) of section 3332 and is supported by the preponderance of the evidence; and

"(2) when the report is submitted pursuant to paragraph (1) of subsection (a) of this section, each person named therein and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) of subsection (a) of this section, it is not critical of an identified person.

"(c)(1) An order accepting a report pursuant to paragraph (1) of subsection (a) of this section and the report shall be sealed by the court and shall not be filed as a public record or be subject to subpena or otherwise made public (i) until at least thirty-one days after a copy of the order and report are served upon each public officer or employee named therein and an answer has been filed or the time for filing an answer has expired, or (ii) if an appeal is taken, until all rights of review of the public officer or employee named therein have expired or terminated in an order accepting the report. No order accepting a report pursuant to paragraph (1) of subsection (a) of this section shall be entered until thirty days after the delivery of such report to the public officer or body pursuant to paragraph (3) of subsection (c) of this section. The court may issue such orders as it shall deem appropriate to prevent unauthorized publication of a report. Unauthorized publication may be punished as contempt of the court.

"(2) Such public officer or employee may file with the clerk a verified answer to such a report not later than twenty days after service of the order and report upon him. Upon a showing of good cause, the court may grant such public officer or employee an extension of time within which to file such answer and may authorize such limited publication of the report as may be necessary to prepare such answer. Such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in said report, and, except for those parts thereof which the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, such answer shall become an appendix to the report.

"(3) Upon the expiration of the time set forth in paragraph (1) of subsection (c) of this section, the United States attorney shall deliver a true copy of such report, and the appendix, if any, for appropriate action to each public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

"(d) Upon the submission of a report pursuant to subsection (a) of this section, if the court finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter, it shall order such report sealed and such report shall not be subject to subpena or public inspection during the pendency of such criminal matter, except upon order of the court.

"(e) Whenever the court to which a report is submitted pursuant to paragraph (1) of subsection (a) of this section is not satisfied that the report complies with the provisions of subsection (b) of this section, it may direct that additional testimony be taken before the same grand jury, or it shall make an order sealing such report, and it shall not be filed as a public record or be subject to subpena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may be extended by the district court beyond thirty-six months in order that such additional testimony may be taken or the provisions of subsection (b) of this section may be met.

"(f) As used in this section, 'public officer or employee' means any officer or employee of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any political subdivision, or any department, agency, or instrumentality thereof.

"§ 3334. General provisions

"The provisions of chapter 215, title 18, United States Code, and the Federal Rules of Criminal Procedure applicable to regular grand juries shall apply to special grand juries to the extent not inconsistent with sections 3331, 3332, or 3333 of this chapter."

(b) The part analysis of part II, title 18, United States Code, is amended by adding immediately after

"215. Grand Jury..... 3321"

the following new item:

"216. Special Grand Jury..... 3331."

SEC. 102. (a) Subsection (a), section 3500, chapter 223, title 18, United States Code, is amended by striking "to an agent of the Government" following "the defendant".

(b) Subsection (d), section 3500, chapter 223, title 18, United States Code, is amended by striking "paragraph" following "the court under" and inserting in lieu thereof "subsection".

(c) Paragraph (1), subsection (e), section 3500, chapter 223, title 18, United States Code, is amended by striking the "or" following the semicolon.

(d) Paragraph (2), subsection (e), section 3500, chapter 223, title 18, United States Code, is amended by striking "to an agent of the Government" after "said witness" and by striking the period at the end thereof and inserting in lieu thereof: "; or (3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.".

TITLE II—GENERAL IMMUNITY

SEC. 201. (a) Title 18, United States Code, is amended by adding immediately after part IV the following new part:

"PART V.—IMMUNITY OF WITNESSES

"Sec.
"6001. Definitions.
"6002. Immunity generally.
"6003. Court and grand jury proceedings.
"6004. Certain administrative proceedings.
"6005. Congressional proceedings.

"§ 6001. Definitions

"As used in this part—

"(1) 'agency of the United States' means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15

U.S.C. sec. 143), the Civil Aeronautics Board, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

"(2) 'other information' includes any book, paper, document, record, recording, or other material;

"(3) 'proceeding before an agency of the United States' means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

"(4) 'court of the United States' means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

"§ 6002. Immunity generally

"Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

"(1) a court or grand jury of the United States,

"(2) an agency of the United States, or

"(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"§ 6003. Court and grand jury proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

"§ 6004. Certain administrative proceedings

"(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

"§ 6005. Congressional proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

"(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

"(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

"(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

"(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify."

(b) The table of parts for title 18, United States Code, is amended by adding at the end thereof the following:

"V. Immunity of Witnesses..... 6001".

SEC. 202. The third sentence of paragraph (b) of section 6 of the Commodity Exchange Act (69 Stat. 160; 7 U.S.C. 15) is amended by striking "49 U.S.C. 12, 46, 47, 48, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses" and by inserting in lieu thereof the following: "(49 U.S.C. § 12), relating to the attendance and testimony of witnesses and the production of documentary evidence,".

SEC. 203. Subsection (f) of section 17 of the United States Grain Standards Act (82 Stat. 768; 7 U.S.C. § 87f(f)), is repealed.

SEC. 204 The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168; 7 U.S.C. § 135c), is amended by inserting after "section", the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 205. Subsection (f) of section 13 of the Perishable Agricultural Commodities Act, 1930 (46 Stat. 536; 7 U.S.C. § 499m(f)), is repealed.

SEC. 206. (a) Section 16 of the Cotton Research and Promotion Act (80 Stat. 285; 7 U.S.C. § 2115) is amended by striking "(a)" and by striking subsection (b).

(b) The section heading for such section 16 is amended by striking ": Self-Incrimination".

SEC. 207. Clause (10) of subsection (a) of section 7 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898 (52 Stat. 847; 11 U.S.C. § 25(a)(10)), is amended by inserting after the first use of the term "testimony" the following language: ", or any evidence which is directly or indirectly derived from such testimony,".

SEC. 208. The fourth sentence of subsection (d) of section 10 of the Federal Deposit Insurance Act (64 Stat. 882; 12 U.S.C. § 1820(d)), is repealed.

SEC. 209. The seventh paragraph under the centered heading "DEPARTMENT OF JUSTICE" in the first section of the Act of February 25, 1903 (32 Stat. 904; 15 U.S.C. § 32), is amended by striking ": *Provided*, That" and all that follows in that paragraph and inserting in lieu thereof a period.

SEC. 210. The Act of June 30, 1906 (34 Stat. 798; 15 U.S.C. § 33), is repealed.

SEC. 211. The seventh paragraph of section 9 of the Federal Trade Commission Act (38 Stat. 722; 15 U.S.C. § 49), is repealed.

SEC. 212. Subsection (d) of section 21 of the Securities Exchange Act of 1934 (48 Stat. 899; 15 U.S.C. § 78u(d)), is repealed.

SEC. 213. Subsection (c) of section 22 of the Securities Act of 1933 (48 Stat. 86; 15 U.S.C. § 77v(c)), is repealed.

SEC. 214. Subsection (e) of section 18 of the Public Utility Holding Company Act of 1935 (49 Stat. 831; 15 U.S.C. § 79r(e)), is repealed.

SEC. 215. Subsection (d) of section 42 of the Investment Company Act of 1940 (54 Stat. 842; 15 U.S.C. § 80a–41(d)), is repealed.

SEC. 216. Subsection (d) of section 209 of the Investment Advisers Act of 1940 (54 Stat. 853; 15 U.S.C. § 80b–9(d)), is repealed.

SEC. 217. Subsection (c) of section 15 of the China Trade Act, 1922 (42 Stat. 953; 15 U.S.C. § 155(c)), is repealed.

SEC. 218. Subsection (h) of section 14 of the Natural Gas Act (52 Stat. 828; 15 U.S.C. § 717m(h)), is repealed.

SEC. 219. The first proviso of section 12 of the Act entitled "An Act to regulate the interstate distribution and sale of packages of hazardous substances intended or suitable for household use," approved July 12, 1960 (74 Stat. 379; 15 U.S.C. § 1271), is amended by inserting after "section" the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 220. Subsection (e) of section 1415 of the Interstate Land Sales Full Disclosure Act (82 Stat. 596; 15 U.S.C. § 1714(e)), is repealed.

SEC. 221. Subsection (g) of section 307 of the Federal Power Act (49 Stat. 856; 16 U.S.C. § 825f(g)), is repealed.

SEC. 222. Subsection (b) of section 835 of title 18, United States Code, is amended by striking the third sentence thereof.

SEC. 223. (a) Section 895 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 42 of such title is amended by striking the item relating to section 895.

SEC. 224. (a) Section 1406 of title 18, United States Code, is repealed.

(b) the table of sections of chapter 68 of such title is amended by striking the item relating to section 1406.

SEC. 225. Section 1954 of tile 18, United States Code, is amended by striking "(a)

Whoever" and inserting in lieu thereof "Whoever" and by striking subsection (b) thereof.

SEC. 226. The second sentence of subsection (b), section 2424, title 18, United States Code, is amended by striking "but no person" and all that follows in that subsection and inserting in lieu thereof: "but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section."

SEC. 227. (a) Section 2514 of title 18, United States Code, is repealed effective four years after the effective date of this Act.

(b) The table of sections of chapter 119 of such title is amended by striking the item relating to section 2514.

SEC. 228. (a) Section 3486 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 223 of such title is amended by striking the item relating to section 3486.

SEC. 229. Subsection (e) of section 333 of the Tariff Act of 1930 (46 Stat. 699; 19 U.S.C. § 1333(e)), is amended by striking ": Provided, That" and all that follows in that subsection and inserting in lieu thereof a period.

SEC. 230. The first proviso of section 703 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1057; 21 U.S.C. § 373), is amended by inserting after "section" the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 231. (a) Section 4874 of the Internal Revenue Code of 1954 is repealed.

(b) The table of sections of part III of subchapter (D) of chapter 39 of such Code is amended by striking the item relating to section 4874.

SEC. 232. Section 7493 of the Internal Revenue Code of 1954 is repealed.

SEC. 233. The table of sections of part III of subchapter (E) of chapter 76 of the Internal Revenue Code of 1954 is amended by striking the item relating to section 7493.

SEC. 234. Paragraph (3) of section 11 of the Labor Management Relations Act, 1947 (49 Stat. 455; 29 U.S.C. § 161(3)), is repealed.

SEC. 235. The third sentence of section 4 of the Act entitled "An Act to provide that tolls on certain bridges over navigable waters of the United States shall be just and reasonable, and for other purposes", approved August 21, 1935 (49 Stat. 671; 33 U.S.C. § 506), is repealed.

SEC. 236. Subsection (f) of section 205 of the Social Security Act (42 U.S.C. § 405(f)) is repealed.

SEC. 237. Paragraph c of section 161 of the Atomic Energy Act of 1954 (68 Stat. 948; 42 U.S.C. § 2201(c)), is amended by striking the third sentence thereof.

SEC. 238. The last sentence of the first paragraph of subparagraph (h) of the paragraph designating "Third" of section 7 of the Railway Labor Act (44 Stat. 582; 45 U.S.C. § 157), is repealed.

Sec. 239. Subsection (c) of section 12 of the Railroad Unemployment Insurance Act (52 Stat. 1107; 45 U.S.C. § 362(c)), is repealed.

Sec. 240. Section 28 of the Shipping Act of 1916 (39 Stat. 737; 46 U.S.C. § 827), is repealed.

Sec. 241. Subsection (c) of section 214 of the Merchant Marine Act, 1936 (49 Stat. 1991; 46 U.S.C. § 1124(c)), is repealed.

Sec. 242. Subsection (1) of section 409 of the Communications Act of 1934 (48 Stat. 1096; 47 U.S.C. § 409 (1)), is repealed.

Sec. 243. (a) The second sentence of section 9 of the Interstate Commerce Act (24 Stat. 382; 49 U.S.C. § 9), is amended by striking "; the claim" and all that follows in that sentence and inserting in lieu thereof a period.

(b) Subsection (a) of section 316 of the Interstate Commerce Act (54 Stat. 946; 49 U.S.C. § 916(a)), is amended by striking the comma following "part I" and by striking ", and the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

(c) Subsection (a) of section 417 of the Interstate Commerce Act (49 U.S.C. § 1017 (a)), is amended by striking the comma after "such provisions" and by striking ", and of the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

Sec. 244. The third sentence of section 3 of the Act entitled "An Act to further regulate Commerce with foreign nations and among the States", approved February 19, 1903 (32 Stat. 848; 49 U.S.C. § 43), is amended by striking "; the claim" and all that follows in that sentence down through and including "Provided, That the provisions" and inserting in lieu thereof ". The provisions".

Sec. 245. The first paragraph of the Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. § 46), is repealed.

Sec. 246. Subsection (i) of section 1004 of the Federal Aviation Act of 1958 (72 Stat. 792; 49 U.S.C. § 1484(i)), is repealed.

Sec. 247. The ninth sentence of subsection (c) of section 13 of the Internal Security Act of 1950 (81 Stat. 768; 50 U.S.C. § 792(c)), is repealed.

Sec. 248. Section 1302 of the Second War Powers Act of 1942 (56 Stat. 185; 50 U.S.C. App. § 463a), is amended by striking the fourth sentence thereof.

Sec. 249. Paragraph (4) of subsection (a) of section 2 of the Act entitled "An Act to expedite national defense, and for other purposes", approved June 28, 1940 (54 Stat. 676; 50 U.S.C. App. § 1152(a)(4)), is amended by striking the fourth sentence thereof.

Sec. 250. Subsection (d) of section 6 of the Export Control Act of 1949 (63 Stat. 8; 50 U.S.C. App. § 2026 (b)), is repealed.

SEC. 251. Subsection (b) of section 705 of the Act of September 8, 1950, to amend the Tariff Act of 1930 (64 Stat. 816; 50 U.S.C. § 2155(b)), is repealed.

SEC. 252. Section 23–545 of the District of Columbia Code is repealed.

SEC. 253. Section 42 of the Act of October 9, 1940, 54 Stat. 1082 (D.C. Code, sec. 35–1346), is repealed.

SEC. 254. Section 2 of the Act of June 19, 1934, 48 Stat. 1176 (section 35–802, District of Columbia Code), is repealed.

SEC. 255. Section 29 of the Act of March 4, 1922, 42 Stat. 414 (section 35–1129, District of Columbia Code), is repealed.

SEC. 256. Section 9 of the Act of February 7, 1914, 38 Stat. 282, as amended (section 22–2721, District of Columbia Code), is repealed.

SEC. 257. Section 5 of the Act of February 7, 1914, 38 Stat. 281 (section 22–2717, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

SEC. 258. Section 8 of the Act of February 7, 1914, 38 Stat. 282 (section 22–2720, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

SEC. 259. In addition to the provisions of law specifically amended or specifically repealed by this title, any other provision of law inconsistent with the provisions of part V of title 18, United States Code (adding by title II of this Act), is to that extent amended or repealed.

SEC. 260. The provisions of part V of title 18, United States Code, added by title II of this Act, and the amendments and repeals made by title II of this Act, shall take effect on the sixtieth day following the date of the enactment of this Act. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day.

TITLE III—RECALCITRANT WITNESSES

SEC. 301. (a) Chapter 119, title 28, United States Code is amended by adding at the end thereof the following new section:

"§ 1826. Recalcitrant witnesses

"(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

"(1) the court proceeding, or

"(2) the term of the grand jury, including extensions,

before which refusal to comply with the court order occurred, but in no event shall confinement exceed eighteen months.

"(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal."

(b) The analysis of chapter 119, title 28, United States Code, is amended by adding at the end thereof the following new item:

"1826. Recalcitrant witnesses.".

SEC. 302. (a) The first paragraph of section 1073, chapter 49, title 18, United States Code, is amended by inserting "or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities," immediately after "is charged,".

(b) The second paragraph of section 1073, chapter 49, title 18, United States Code, is amended by inserting immediately after "held in custody or confinement" a comma and adding "or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed,".

TITLE IV—FALSE DECLARATIONS

SEC. 401. (a) Chapter 79, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1623. False declarations before grand jury or court

"(a) Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years or both.

"(b) This section is applicable whether the conduct occurred within or without the United States.

"(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

"(1) each declaration was material to the point in question and,

"(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

"(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

"(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other types of evidence."

(b) The analysis of chapter 79, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1623. False declarations before grand jury or court."

TITLE V—PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

SEC. 501. The Attorney General of the United States is authorized to provide for the security of Government witnesses, potential Government witnesses, and the families of Government witnesses and potential witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity.

SEC. 502. The Attorney General of the United States is authorized to rent, purchase, modify, or remodel protected housing facilities and to otherwise offer to provide for the health, safety, and welfare of witnesses and persons intended to be called as Government witnesses, and the families of witnesses and persons intended to be called as Government witnesses in legal proceedings instituted against any person alleged to have participated in an organized criminal activity whenever, in his judgment, testimony from, or a willingness to testify by, such a witness would place his life or person, or the life or person of a member of his family or household, in jeopardy. Any person availing himself of an offer by the Attorney General to use such facilities may continue to use such facilities for as long as the Attorney General determines the jeopardy to his life or person continues.

SEC. 503. As used in this title, "Government" means the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof. The offer of facilities to witnesses may be conditioned by the Attorney General upon reimbursement in whole or in part to the United States by any State or any political subdivision, or any department, agency, or instrumentality thereof of the cost of maintaining and protecting such witnesses.

SEC. 504. There is hereby authorized to be appropriated from time to time such funds as are necessary to carry out the provisions of this title.

TITLE VI—DEPOSITIONS

SEC. 601. (a) Chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3503. Depositions to preserve testimony

"(a) Whenever due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved, the court at any time after the filing of an indictment or information may upon motion of such party and notice to the parties order that the testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged to be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness. A motion by the Government to obtain an order under this section shall contain certification by the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity.

"(b) The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination, and shall produce him at the examination and keep him in the presence of the witness during the examination. A defendant not in custody shall have the right to be present at the examination, but his failure, absent good cause shown, to appear after notice and tender of expenses shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

"(c) If a defendant is without counsel, the court shall advise him of his rights and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel of his own choice. Whenever a deposition is taken at the instance of the Government, or whenever a deposition is taken at the instance of a defendant who appears to be unable to bear the expense of the taking of the deposition the court may direct that the expenses of travel and subsistence of the defendant and his attorney for attendance at the examination shall be paid by the Government. In such event the marshal shall make payment accordingly.

"(d) A deposition shall be taken and filed in the manner provided in civil actions, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. On request or waiver by the defendant the court may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. Such request shall constitute a waiver of any objection to the taking and use of the deposition based upon its being so taken.

"(e) The Government shall make available to the defendant for his examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the Government and which the Government would be required to make available to the defendant if the witness were testifying at the trial.

"(f) At the trial or upon any hearing, a part or all of a depostiion, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part offered; or that the party offering the deposition has been unable to procure the attendance of the witness by subpena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

"(g) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions."

(b) The analysis of chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new item:

"3503. Depositions to preserve testimony."

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

PART A—SPECIAL FINDINGS

SEC. 701. The Congress finds that claims that evidence offered in proceedings was obtained by the exploitation of unlawful acts, and is therefore inadmissible in evidence, (1) often cannot reliably be determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and (2) when the allegedly unlawful act has occurred more than five years prior to the event in question, there is virtually no likelihood that the evidence offered to prove the event has been obtained by the exploitation of that allegedly unlawful act.

PART B—LITIGATION CONCERNING SOURCES OF EVIDENCE

SEC. 702 (a) Chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3504. Litigation concerning sources of evidence

"(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

"(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;

"(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; and

"(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.

"(b) As used in this section 'unlawful act' means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto."

(b) The analysis of chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new item:

"3504. Litigation concerning sources of evidence."

SEC. 703. This title shall apply to all proceedings, regardless of when commenced, oc-

curring after the date of its enactment. Paragraph (3) of subsection (a) of section 3504, chapter 223, title 18, United States Code, shall not apply to any proceeding in which all information to be relied upon to establish inadmissibility was possessed by the party making such claim and adduced in such proceeding prior to such enactment.

TITLE VIII—SYNDICATED GAMBLING

PART A—SPECIAL FINDINGS

SEC. 801. Congress finds that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

PART B—OBSTRUCTION OF STATE OR LOCAL LAW ENFORCEMENT

SEC. 802. (a) Chapter 73, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1511. Obstruction of State or local law enforcement

"(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if—

"(1) one or more of such persons does any act to effect the object of such a conspiracy;

"(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

"(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of the law of a State or political subdivision in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

"(2) 'gambling' includes but is not limited to pool selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

"(d) Whoever violates this section shall be punished by a fine of not more than $20,000 or imprisonment for not more than five years, or both."

(b) The analysis of chapter 73, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1511. Obstruction of State or local law enforcement."

PART C—ILLEGAL GAMBLING BUSINESS

SEC. 803. (a) Chapter 95, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1955. Prohibition of illegal gambling businesses

"(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of the law of a State or political subdivision in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

"(2) 'gambling' includes but is not limited to poolselling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

"(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity."

(b) The analysis of chapter 95, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1955. Prohibition of illegal gambling businesses."

PART D—COMMISSION TO REVIEW NATIONAL POLICY TOWARD GAMBLING

ESTABLISHMENT

SEC. 804. (a) There is hereby established two years after the effective date of this Act a Commission on the Review of the National Policy Toward Gambling.

(b) The Commission shall be composed of fifteen members appointed as follows:

(1) four appointed by the President of the Senate from Members of the Senate, of whom two shall be members of the majority party, and two shall be members of the minority party;

(2) four appointed by the Speaker of the House of Representatives from Members of the House of Representatives, of whom two shall be members of the majority party, and two shall be members of the minority party; and

(3) seven appointed by the President of the United States from persons specially qualified by training and experience to perform the duties of the Commission, none of whom shall be officers of the executive branch of the Government.

(c) The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(d) Eight members of the Commission shall constitute a quorum.

DUTIES

SEC. 805. (a) It shall be the duty of the Commission to conduct a comprehensive legal and factual study of gambling in the United States and existing Federal, State, and local policy and practices with respect to legal prohibition and taxation of gambling activities and to formulate and propose such changes in those policies and practices as the Commission may deem appropriate. In such study and review the Commission shall—

(1) review the effectiveness of existing practices in law enforcement, judicial administration, and corrections in the United States and in foreign legal jurisdictions for the enforcement of the prohibition and taxation of gambling activities and consider possible alternatives to such practices; and

(2) prepare a study of existing statutes of the United States that prohibit and tax gambling activities, and such a codification, revision, or repeal thereof as the Commission shall determine to be required to carry into effect such policy and practice changes as it may deem to be necessary or desirable.

(b) The Commission shall make such interim reports as it deems advisable. It shall make a final report of its findings and recommendations to the President of the United States and to the Congress within the four-year period following the establishment of the Commission.

(c) Sixty days after the submission of its final report, the Commission shall cease to exist.

POWERS

SEC. 806. (a) The Commission or any duly authorized subcommittee or member thereof may, for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or any duly designated member of the Commission, and may be served by any person designated by the Chairman or such member.

(b) In the case of contumacy or refusal to obey a subpena issued under subsection (a) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

(c) The Commission shall be "an agency of the United States" under subsection (1), section 6001, title 18, United States Code, for the purpose of granting immunity to witnesses.

(d) Each department, agency, and instrumentality of the executive branch of the Government including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States to furnish, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

COMPENSATION AND EXEMPTION OF MEMBERS

SEC. 807. (a) A member of the Commission who is a Member of Congress or a member of the Federal judiciary shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(b) A member of the Commission who is not a member of Congress or a member of the Federal judiciary shall receive $100 per diem when engaged in the actual performance of duties vested in the Commission plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

STAFF

SEC. 808. (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems 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, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

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

(b) In making appointments pursuant to this subsection, the Chairman shall include among his appointments individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

EXPENSES

SEC. 809. There are hereby authorized to be appropriated to the Commission such sums as may be necessary to carry this title into effect.

PART E—GENERAL PROVISIONS

SEC. 810. Paragraph (c), subsection (1), Section 2516, title 18, United States Code, is amended by adding "section 1511 (obstruction of State or local law enforcement)," after "section 1510 (obstruction of criminal investigations)," and by adding "section 1955 (prohibition of business enterprises of gambling)," after "section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan),".

SEC. 811. No provision of this title indicates an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of a State or possession, or a political subdivision of a State or possession, on the same subject matter, or to relieve any person of any obligation imposed by any law of any State or possession, or political subdivision of a State or possession.

TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

SEC. 901. (a) Title 18, United States Code, is amended by adding immediately after chapter 95 thereof the following new chapter:

"Chapter 96.—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

"Sec.
"1961. Definitions.
"1962. Prohibited racketeering activities.
"1963. Criminal penalties.
"1964. Civil remedies.
"1965. Venue and process.
"1966. Expedition of actions.
"1967. Evidence.
"1968. Civil investigative demand.

"§ 1961. Definitions

"As used in this chapter—

"(1) 'racketeering activity' means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

"(2) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

"(3) 'person' includes any individual or entity capable of holding a legal or beneficial interest in property;

"(4) 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

"(5) 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

"(6) 'unlawful debt' means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

"(7) 'racketeering investigator' means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

"(8) 'racketeering investigation' means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

"(9) 'documentary material' includes any book, paper, document, record, recording, or other material; and

"(10) 'Attorney General' includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

"§ 1962. Prohibited activities

"(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

"(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

"(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

"§ 1963. Criminal penalties

"(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

"§ 1964. Civil remedies

"(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

"(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

"(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

"(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

"§ 1965. Venue and process

"(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

"(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

"(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

"(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

"§ 1966. Expedition of actions.

"In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

"§ 1967. Evidence

"In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

"§ 1968. Civil investigative demand

"(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

"(b) Each such demand shall—

"(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

"(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

"(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

"(4) identify the custodian to whom such material shall be made available.

"(c) No such demand shall—

"(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

"(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

"(d) Service of any such demand or any petition filed under this section may be made upon a person by—

"(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

"(2) delivering a duly executed copy thereof of the principal office or place of business of the person to be served; or

"(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

"(e) A certified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

"(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

"(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian

as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

"(5) Upon the completion of—

"(i) the racketeering investigation for which any documentary material was produced under this chapter, and

"(ii) any case or proceeding arising from such investigation,

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

"(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

"(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

"(i) designate another racketeering investigator to serve as custodian thereof, and

"(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

"(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

"(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section."

(b) The table of contents of part I, title 18, United States Code, is amended by adding imediately after

"95. Racketeering ..... 1951"

the following new item:

"96. Racketeer Influenced and Corrupt organizations ..... 1961"

SEC. 902. (a) Paragraph (c), subsection (1), section 2516, title 18, United States Code, is amended by inserting at the end thereof between the parenthesis and the semicolon ", section 1963 (violations with respect to racketeer influenced and corrupt organizations)".

(b) Subsection (3), section 2517, title 18, United States Code, is amended by striking "criminal proceedings in any court of the United States or of any State or in any Federal or State grand jury proceeding" and inserting in lieu thereof "proceeding held under the authority of the United States or of any State or political subdivision thereof".

SEC. 903. The third paragraph, section 1505, title 18, United States Code, is amended by inserting "or section 1968 of this title" after "Act" and before "willfully".

SEC. 904. (a) The provisions of this title shall be liberally construed to effectuate its remedial purposes.

(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

SEC. 1001. (a) Chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3575. Increased sentence for dangerous special offenders

"(a) Whenever an attorney charged with the prosecution of a defendant in a court of the United States for an alleged felony committed when the defendant was over the age of twenty-one years has reason to believe that the defendant is a dangerous special offender such attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the defendant is alleged to be a dangerous special offender be an issue upon the trial of such felony, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.

"(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

"(c) This section shall not prevent the imposition and execution of a sentence of death or of imprisonment for life or for a term exceeding twenty-five years upon any person convicted of an offense so punishable.

"(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special offender to less than any mandatory minimum penalty prescribed by

law for such felony. This section shall not be construed as creating any mandatory minimum penalty.

"(e) A defendant is a special offender for purposes of this section if—

"(1) the defendant has previously been convicted in courts of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof for two or more offenses committed on occasions different from one another and from such felony and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony, and less than five years have elapsed between the commission of such felony and either the defendant's release, on parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense punishable by death or imprisonment in excess of one year under applicable laws of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof; or

"(2) the defendant committed such felony as part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

"(3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use forces as all or part of such conduct. A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such conduct. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602, as amended 80 Stat. 838), and as hereafter amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Act of 1954 (68A Stat. 17, as amended 83 Stat. 655), and as hereafter amended. For the purposes of paragraph (2) of this subsection, special skill or expertise in criminal conduct includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of criminal conduct, the enlistment of accomplices in such conduct, the escape from detection or apprehension for such conduct, or the disposition of the fruits or proceeds of such conduct. For purposes of paragraphs (2) and (3) of this subsection, criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

"'(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felony is required for the protection of the public from further criminal conduct by the defendant.

"(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured for imposition of the original sentence.

"With respect to the imposition, correction, or reduction of a sentence after proceedings under section 3575 of this chapter, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of abuse of the right of the United States to take such review.

"§ 3577. Use of information for sentencing

"No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

"§ 3578. Conviction records

"(a) The Attorney General of the United States is authorized to establish in the Department of Justice a repository for records of convictions and determinations of the validity of such convictions.

"(b) Upon the conviction thereafter of a defendant in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judical determination of the validity of such conviction on collateral review, the court shall cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe.

"(c) Records maintained in the repository shall not be public records. Certified copies thereof—

"(1) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

"(2) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of a State, any political subdivision, or any department, agency, or instrumentality thereof, if a statute of such State requires that, upon the conviction of a defendant in a court of the State or any political subdivision thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe; and

"(3) shall be prima facie evidence in any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof, that the convictions occurred and whether they have been judicially determined to be invalid on collateral review.

"(d) The Attorney General of the United States shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations under this section."

(b) The analysis of chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new items:

"3575. Increased sentence for dangerous special offenders.
"3576. Review of sentence.
"3577. Use of information for sentencing.
"3578. Conviction records."

SEC. 1002. Section 3148, chapter 207, title 18, United States Code, is amended by adding "or sentence review under section 3576 of this title" immediately after "sentence".

TITLE XI—REGULATION OF EXPLOSIVES

PURPOSE

SEC. 1101. The Congress hereby declares that the purpose of this title is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

SEC. 1102. Title 18, United States Code, is amended by adding after chapter 39 the following chapter:

"Chapter 40.—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

"Sec.
"841. Definitions.
"842. Unlawful acts.
"843. Licensing and user permits.
"844. Penalties.
"845. Exceptions; relief from disabilities.
"846. Additional powers of the Secretary.
"847. Rules and regulations.
"848. Effect on State law.

"§ 841. Definitions

"As used in this chapter—

"(a) 'Person' means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

"(b) 'Interstate or foreign commerce' means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

"(c) 'Explosive materials' means explosives, blasting agents, and detonators.

"(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, 'explosives' means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term 'explosive' is defined in subsection (j) of such section 844.

"(e) 'Blasting agent' means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

"(f) 'Detonator' means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

"(g) 'Importer' means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

"(h) 'Manufacturer' means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

"(i) 'Dealer' means any person engaged in the business of distributing explosive materials at wholesale or retail.

"(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

"(k) 'Secretary' means the Secretary of the Treasury or his delegate.

"(l) 'Crime punishable by imprisonment for a term exceeding one year' shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

"(m) 'Licensee' means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

"(n) 'Distribute' means sell, issue, give, transfer, or otherwise dispose of.

"§ 842. Unlawful acts

"(a) It shall be unlawful for any person—

"(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

"(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

"(3) other than a licensee or permittee knowingly—

"(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

"(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

"(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

"(1) a licensee;

"(2) a permittee; or

"(3) a resident of the State where the distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

"(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

"(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

"(1) is under twenty-one years of age;

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

"(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

"(4) is a fugitive from justice;

"(5) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721 (a) of the Internal Revenue Code of 1954; or

"(6) has been adjudicated a mental defective.

"(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

"(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

"(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

"(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

"(i) It shall be unlawful for any person—

"(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) who is a fugitive from justice;

"(3) who is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

"(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

"(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

"(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

"§ 843. Licenses and user permits

"(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed $200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

"(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

"(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direc-

tion of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

"(2) the applicant has not wilfully violated any of the provisions of this chapter or regulations issued hereunder;

"(3) the applicant has in a State premises from which he conducts or intends to conduct business;

"(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

"(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

"(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

"(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

"(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701–706 of title 5, United States Code.

"(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

"(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

"§ 844. Penalties

"(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) Any person who violates any other provision of section 842 of this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, wilfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.

"(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than $1,000, or both.

"(h) Whoever—

"(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or

"(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

"(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(j) For the purposes of subsections (d), (e), (f), (g), (h) and (i) of this section, the term 'explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

"§ 845. Exceptions; relief from disabilities

"(a) Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

"(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof;

"(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

"(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

"(4) small arms ammunition and components thereof;

"(5) black powder in quantities not to exceed five pounds; and

"(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

"(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with repect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further opera-

tions under his license or permit pending final action on an application for relief filed pursuant to this section.

"§ 846. Additional powers of the Secretary

"The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

"§ 847. Rules and regulations

"The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

"§ 848. Effect on State law

"No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together."

(b) The title analysis of title 18, United States Code, is amended by inserting immediately below the item relating to chapter 39 the following:

"40. Importation, manufacture, distribution and storage of explosive materials ---------- 841".

SEC. 1103. Section 2516(1)(c) of title 18, United States Code, is amended by inserting after "section 224 (bribery in sporting contests)," the following: "subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives),"

SEC. 1104. Nothing in this title shall be construed as modifying or affecting any provision of—

(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) Section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control;

(c) Section 1716 of title 18, United States Code, relating to nonmailable materials;

(d) Sections 831 through 836 of title 18, United States Code; or

(e) Chapter 44 of title 18, United States Code.

SEC. 1105. (a) Except as provided in subsection (b), the provisions of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect one hundred and twenty days after the date of enactment of this Act.

(b) The following sections of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect on the date of the enactment of this Act: sections 841, 844 (d), (e), (f), (g), (h), (i), and (j), 845, 846, 847, 848, and 849.

"(c) Any person (as defined in section 841(a) of title 18, United States Code) engaging in a business or operation requiring a license or permit under the provisions of chapter 40 of such title 18 who was engaged in such business or operation on the date of enactment of this Act and who has filed an application for a license or permit under the provisions of section 843 of such chapter 40 prior to the effective date of such section 843 may continue such business or operation pending final action on his application. All provisions of such chapter 40 shall apply to such applicant in the same manner and to the same extent as if he were a holder of a license or permit under such chapter 40.

SEC. 1106. (a) The Federal Explosives Act of October 6, 1917 (40 Stat. 385, as amended; 50 U.S.C. 121–143), and as extended by Act of July 1, 1948 (40 Stat. 671; 50 U.S.C. 144), and all regulations adopted thereunder are hereby repealed.

(b) (1) Section 837 of title 18 of the United State Code is repealed.

(2) The item relating to such section 837 in the chapter analysis of chapter 39 of such title 18 is repealed.

SEC. 1107. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

TITLE XII—NATIONAL COMMISSION ON INDIVIDUAL RIGHTS

SEC. 1201. There is hereby established the National Commission on Individual Rights (hereinafter in this title referred to as the "Commission").

SEC. 1202. The Commission shall be composed of fifteen members appointed as follows:

(1) four appointed by the President of the Senate from Members of the Senate;

(2) four appointed by the Speaker of the House of Representatives from Members of the House of Representatives; and

(3) seven appointed by the President of the United States from all segments of life in the United States, including but not limited to lawyers, jurists, and policemen, none of whom shall be officers of the executive branch of the Government.

SEC. 1203. The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

SEC. 1204. It shall be the duty of the Commission to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries authorized under chapter 216 of title 18, United States Code, dangerous special offender sentencing under section 3575 of title 18, United States Code, wiretapping and electronic surveillance, bail reform and preventive detention, no-knock search warrants, and the accumulation of data on individuals by Federal agencies as authorized by law or acquired by executive action. The Commission may also consider other Federal laws and practices which in its opinion may infringe upon the individual rights of the people of the United States. The Commission shall determine which laws and practices are needed, which are effective, and whether they infringe upon the individual rights of the people of the United States.

SEC. 1205. (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems 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, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

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

(b) In making appointments pursuant to subsection (a) of this section, the Chairman shall include among his appointment individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

SEC. 1206. (a) A member of the Commission who is a Member of Congress shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(b) A member of the Commission from private life shall receive $100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

SEC. 1207. Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States to furnish such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

SEC. 1208. The Commission shall make interim reports and recommendations as it deems advisable, but at least every two years, and it shall make a final report of its findings and recommendations to the President of the United States and to the Congress at the end of six years following the effective date of this section. Sixty days after the submission of the final report, the Commission shall cease to exist.

SEC. 1209. (a) except as provided in subsection (b) of this section, any member of the Commission is exempted, with respect to his appointment, from the operation of sections 203, 205, 207, and 209 of title 18, United States Code.

(b) The exemption granted by subsection (a) of this section shall not extend—

(1) to the receipt of payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(2) during the period of such appointment, to the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

SEC. 1210. The foregoing provisions of this title shall take effect on January 1, 1972.

SEC. 1211. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SEC. 1212. Section 804 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90–351; 18 U.S.C. 2510 note) is repealed.

TITLE XIII—GENERAL PROVISIONS

SEC. 1301. If the provisions of any part of this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

Mr. McCLELLAN. Mr. President, on January 15 of last year, I introduced, along with my distinguished colleagues, the Senator from Nebraska (Mr. HRUSKA), the Senator from North Carolina (Mr. ERVIN), and the Senator from

Alabama (Mr. ALLEN), S. 30, the Organized Crime Control Act of 1969.

Later in that session of the Congress other bills dealing with organized crime problems were introduced. All of them were referred to the Judiciary Subcommittee on Criminal Laws and Procedures, which I am privileged to chair. After appropriate hearings on these measures, the subcommittee worked the provisions of seven of these bills into the 10 substantive titles that made up the text of the comprehensive organized crime control measure (S. 30) which was later reported to the Senate.

Senators EASTLAND, MUNDT, ERVIN, HRUSKA, TYDINGS, and the late Senator Dirksen authored bills that were ultimately incorporated, in part at least, into S. 30. President Nixon, too, contributed great assistance to our efforts in the development of this legislation with his message on organized crime of April 23, 1969, in which he recommended one item in particular—which was covered specifically by S. 2022—and expressed his strong support for four other measures, S. 30, S. 1624, S. 1861, and S. 2122.

Members of both sides of the aisle—and of all political philosophies—contributed to the favorable reception that S. 30 received and to its passage by the Senate on January 23 of this year by a vote of 73 to 1. Incidentally, Mr. President, 22 Senators who were not present at the time of Senate passage have since announced in the RECORD that if they had been present they would have voted for passage. This brings the announced and recorded support of Senators for the measure to a total of 95.

Mr. President, because of this practically unanimous support, I had hoped that the House would expeditiously process it and that we would have had favorable action on it by the House long before now. However, those expectations were not altogether fulfilled.

The House Judiciary Committee did not begin hearings on the measure until May, nearly 4 months after Senate passage, and did not report the bill to the House until September 30, more than 9 months after it passed the Senate. However, on last Wednesday, when the House was given the opportunity to consider and vote on S. 30, it passed the measure—largely in the form and with provisions substantially as it passed the Senate—by a resounding vote of 341 to 26. It is significant, I think, that the principles of all of the original 10 titles of the measure were retained by the House.

The House added two new titles: One dealing with bombings and explosives, and the other setting up a Commission on Individual Rights.

Mr. President, I have examined with some care the bill as passed by the House. In view of the comparatively and largely minor changes made by the House, I must confess that I am at some loss to understand why the House Judiciary Committee took so long to process this measure. The hope of some and the expectations of a few that this bill would be emasculated in the House certainly has not materialized. No bill is perfect, and every measure can be improved by the study of those who with good will have that objective.

It is in this context, therefore, that I can say that a few of the changes made in the bill by the House are clarifying and strengthening. In this context, too, I particularly welcome the suggestions made in the House hearings by the American Bar Association. The bar association approved S. 30 as it passed the Senate and urged its "swift adoption." However, it did make some suggestions from improvement. I think all of the suggestions it recommended, and which were adopted by the House, improved the bill, except one—and that is the amendment with respect to grand jury reports. Possibly the most weakening amendment passed by the House is the one that excludes elected officials from those persons who might be made the subjects of grand jury reports.

It may be noted, Mr. President, that, in contrast, the Senate rejected a motion—an amendment—that would have had a similar effect by a vote of 59 to 13. I, for one, do not see how we can make applicable to others provision of a bill which we are unwilling to have apply to ourselves.

Some of the other House changes, nevertheless, seem to be little more than an exercise in semantics. The Senate bill, for instance, made "manifestly contradictory" declarations sufficient in themselves to establish falsity in a false declaration or perjury prosecution. The House measure requires the declarations to be "irreconcilably inconsistent." There may be a difference in the two tests, but it is surely one of small practical importance. Many other changes made by the House, I think, are comparable and can be described in like terms.

Mr. President, S. 30 is vitally needed legislation. Its provisions will correct several difficulties in the evidence gathering processes which are especially troublesome in organized crime cases. It will limit defense abuses of pretrial hearings, extend Federal jurisdiction over major cases of gambling and corruption, curb organized crime infiltration of legimate organizations, and authorize extended sentences for Federal offenders.

This bill, Mr. President, embodies the recommendations of such august bodies as the American Bar Association, the President's Commission on Crime and Administration of Justice, and others.

Mr. President, a fair assessment of the House bill as compared to the Senate bill leads me to conclude that the House bill now contains at least 85 to 95 percent of the most important provisions that were in the bill as it passed the Senate. Thus, the force and efficacy of the Senate measure is substantially retained.

Mr. President, we are approaching a recess of the Congress this week. A conference could not possibly act on this measure until after Congress reconvenes—sometime the latter part of November. Therefore, in view of the foregoing, Mr. President, I have concluded that the comparatively small difference between the House amendments and the provisions in the Senate bill can hardly justify the certain further delay—and the possible disagreement—that a conference might entail. This law is needed. Every day that its final enactment is delayed will lend further convenience, comfort, and protection, if not immunity, to many organized crime offenders. The Nation needed this legislation when it was introduced. It needed it 6 months ago. It needs it now.

Mr. President, for the reasons I have stated, I most respectfully recommend that the Senator accept the House amendments, and I so move.

Mr. HRUSKA. Mr. President, it is gratifying to note that the other body has finally passed the Organized Crime Control Act (S. 30) which this body had passed in January of this year by a vote of 73 to 1. From January, until it was reported by the House Judiciary Committee approximately 2 weeks ago, the bill saw no action in the House despite the urgency of its enactment caused by the serious crime conditions which today prevail across the nation.

The bill as reported by the House Judiciary, and as passed by the House last week by an overwhelming bipartisan vote of 341 to 26, contains essentially all of the provisions of S. 30 as it was passed by this body. Although the House Judiciary Committee purported to make a considerable number of changes in the legislation, the chances were not of major significance. The most important change which the House effected was to incorporate a title dealing with the unlawful use of explosives and incendiary devises. That title contains provisions similar to those appearing in the Senate bill on the same subject, S. 3650, which the Senate passed last Thursday, October 8.

S. 30 contains many of the anticrime measures which the President recommended in his message on organized crime delivered to the Congress nearly 18 months ago, in April 1969. It includes provisions for a wide range of needed procedural reforms dealing with virtually every stage of the criminal justice process from investigation through prosecution, conviction, and sentencing. It also contains, as passed by the Senate and now by the House, two innovative substantive titles dealing respectively with illegal syndicated gambling and the infiltration of legitimate business by racketeering methods. In addition to the title dealing with explosives and incendiary weapons which, as I mentioned, was added by the House, the bill retains the 10 titles from the Senate version which provide as follows:

Title I, Special Grand Jury—creates special grand juries to sit for extended terms of 18 months, or longer if necessary, in densely populated districts where the influence of organized crime is greatest. These special grand juries will not only return indictments, but upon the completion of their terms may issue public reports upon organized criminal activities and the noncriminal misconduct of appointed public officials which facilitates such activities.

Title II. General Immunity—creates a single uniform witness immunity statute which will enable the Government in any court, administrative, or legislative proceeding to obtain the testimony of a witness who otherwise refuses to testify on the ground that he might incriminate himself. The immunity provided protects the witness from the use against him of his compelled testimony and its fruits in any prosecution for offenses

committed prior to the time he testified, but does not foreclose prosecution for his past criminal offenses upon the basis of entirely independent evidence.

Title III. Recalcitrant Witnesses—enforces the immunity provision by expressly authorizing civil contempt proceedings against witnesses who refuse to comply with a lawful order of the court to testify in a grand jury proceeding or trial.

Title IV. False Declaration—discourages fabricated testimony by creating a false statement statute applicable in court and grand jury proceedings which eliminates the anachronistic two-witness rule for perjury prosecutions, provides for perjury prosecutions on the basis of irreconcilable contradictory statements under oath, and permits the Government to prove the offenses by proof beyond a reasonable doubt.

Title V. Protected Facilities for Housing Government Witnesses—authorizes the Attorney General to offer protective housing facilities to endangered witnesses in organized crime cases and otherwise to provide for their welfare and safety both before and after they testify. It is intended to assure, insofar as is possible, the attendance of important prosecution witnesses at trial, and to fulfill the community's obligation to the witness who performs a public duty by testifying at the risk of life and limb in a criminal proceeding.

Title VI. Depositions—permits the Government to take and preserve the testimony of a witness in a prosecution of any person who is believed to have engaged in any organized criminal activity, that is, not an isolated offense by an isolated offender where it is feared that the witness may die, hide, flee the country, or be killed, injured, kidnaped, bribed, or intimidated into silence prior to trial. This may upon occasion save a witness' life by eliminating the criminal syndicate's primary motivation for doing away with him.

Title VII. Litigation Concerning Sources of Evidence—will expedite trials of organized crime offenders by modifying the existing practice where a defendant claims the Government's evidence is inadmissible because it was discovered through an improper electronic surveillance conducted prior to the act of June 19, 1968—Public Law 90–351, title III, section 802—which provided statutory authority for surveillance warrants. Thereafter, title III will act of its own accord.

Title VIII. Syndicated Gambling—makes it a Federal offense to engage in the operation of a large-scale illegal gambling enterprise, or to participate in a conspiracy to obstruct the enforcement of State gambling laws through the corruption of State or local authorities. It implements the administration's intent to focus upon illegal gambling as the financial lifeline of organized crime.

Title IX. Racketeer Influenced and Corrupt Organizations—makes it unlawful to use income obtained from certain designated racketeering enterprises to acquire an interest in a business engaged in interstate commerce, to use racketeering activities as a means of acquiring such a business, or to operate such a business by racketeering methods. The title utilizes criminal forfeitures and civil remedies modeled upon the antitrust laws to prevent and restrain violations.

Title X. Dangerous Special Offender Sentencing—permits a Federal court, under appropriate safeguards, to impose a sentence of imprisonment for up to 25 years upon a dangerous felony offender when the felony of which he is convicted constitutes a third felony offense, or when the felony was committed as part of a pattern of conduct which indicated that the defendant was either a professional criminal or a participant in a leadership or other key position in a criminal conspiracy. Extended sentences may be imposed only after the court has held a special sentencing hearing at which the defendant will be present with counsel, and the sentencing procedure is made subject to review by the courts of appeal.

Mr. President, these measures are urgently needed if we are successfully to combat the growing menace of organized crime in this Nation. Moreover, although opponents of this legislation in the House argued that its enactment will have no effect upon the street crime which so concerns our citizens and renders our streets unsafe, nothing could be further from the truth. Organized crime with its virtual monopoly over illegal goods and services, including the illegal traffic in narcotics and the efficient fencing of stolen goods, encourages street crime by inducing narcotics addicts to mug and rob, and housebreakers and burglars to steal. Moreover, organized crime penetrates the depth of our society in ways of which many citizens are unaware. The Attorney General said at the Senate subcommittee hearings on S. 30:

> Perhaps the most insidious feature of organized crime is its ability to victimize many millions of our citizens who for the most part are not aware of how they are affected, or that they are affected at all. The housewife for example, has no way of knowing that when the price of meat, bread, vegetables or dairy products rises, the increase may be the result of an organized crime conspiracy. The wage earner may be unaware of misuses of his union pension fund. The investor may be unaware of stock market manipulations resulting from massive purchases and/or sales of securities by organized crime syndicates. The taxpayer is unaware of his revenue losses from organized criminal activity which make his taxes go up. The ghetto resident who looks upon the numbers game as an opportunity to escape poverty fails to realize that organized crime drains millions of dollars each year from the poor through this operation.

Mr. President, S. 30 as passed by the House is little changed from the strong bill for the control of organized crime that was passed by this body last January. It still represents an effective response to the problems which the threat of organized crime poses to the Nation. Because of the urgency of the legislation, I recommend that this body by approving the pending motion now unanimously agree to the House amendments, avoid the necessity for a conference, and speed this vital measure to the President for his signature.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

PROGRAM—UNANIMOUS-CONSENT REQUEST

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that immediately upon the conclusion of action on the pending question, the Senate proceed to the consideration of Calendar No. 1300, the Occupational Health and Safety Act.

Mr. GRIFFIN. Mr. President, I must object at the request of and on behalf of other Senators. Unfortunately, the business of the Senate requires that some Senators who have a very key role and a very personal interest in this legislation must be involved in conferences on other legislation this afternoon.

As the Senate is aware, this bill of some 91 pages has some controversial provisions in it and members of the Committee on Labor and Public Welfare who must and wish to participate in the debate could not do so this afternoon. Therefore, I must respectfully object.

Mr. BYRD of West Virginia. Mr. President, I can understand the objection made by the able assistant minority leader. I would like, therefore, to revise my request.

Mr. President, I ask unanimous consent that on tomorrow not later than 3 p.m., the unfinished business be laid aside, to remain in that status until the conclusion of morning business on Wednesday next, and at that time, on tomorrow, the Senate proceed to the consideration of Calendar No. 1300, the occupational health and safety bill.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. MUSKIE). The Senator from Arkansas is recognized.

Mr. McCLELLAN. Mr. President, reserving the right to object, and I shall not object, I would like to ask the Senator if this would preclude the offering of a resolution from the floor and asking for its immediate consideration.

Mr. BYRD of West Virginia. Not at all.

Mr. BAYH. Mr. President, I wonder if our distinguished leader would withdraw that particular unanimous-consent request and permit me to make one which deals with the present order of business.

As the principal cosponsor and floor manager of the pending order of business I feel obligated to pursue all avenues open, within reason, to see that this measure is pursued as diligently as we can in this body. I must admit, in all honesty to my colleagues, I have some inkling that I shall not be successful in the request, but I feel duty bound to pursue those requests, hoping the anticipated objector would have the benevolence in his heart not to object.

Mr. BYRD of West Virginia. Mr. President, I temporarily withdraw my request.

ORGANIZED CRIME CONTROL ACT OF 1970

The Senate resumed the consideration of the amendment of the House of Representatives to the bill (S. 30) relating to the control of organized crime in the United States.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arkansas.

Mr. COOPER. Mr. President, reserving the right to object, although I do not think I will object. I desire to ask some questions about the bill. I know the concern held in the country and the Congress about the rising tide of crime, and the interest in the bill before us. I recall this bill when it passed the Senate as one including many new titles, and many new provisions, recommended either by the Department of Justice and the President, or recommended by the Committee on the Judiciary under the leadership of the Senator from Arkansas (Mr. McCLELLAN), and the Senator from Nebraska (Mr. HRUSKA).

Now the bill is before us again as amended by the House, and without time for consideration. We do not know exactly what these amendments are. I recall that in the Senate debate questions were raised about controversial provisions which went beyond the accepted, or at least what has been considered as accepted principles regarding the rights of individuals. I spoke on the bill when it was before the Senate and expressed my opposition to some sections of the bill.

I wish to ask a question about title II, General Immunity. Was that section changed in any way by the House?

Mr. McCLELLAN. As amended by the House, the bill retains substantially what was in the Senate bill. The only important change made was to require the approval of the Attorney General before Federal agencies could grant immunity. That strengthens the bill, and it is a very good amendment.

Mr. COOPER. That is, an agency of the Federal Government?

Mr. McCLELLAN. Yes.

Mr. COOPER. Of course, it applies only to the Federal courts.

Mr. McCLELLAN. Only to the Federal courts or to those here in the District of Columbia.

Mr. COOPER. And to Congress?

Mr. McCLELLAN. Well, Congress would not have to ask the Attorney General.

Mr. COOPER. The bill states "legislative branch."

Mr. McCLELLAN. It applies to the legislative branch and the executive branch of the Government.

Mr. COOPER. I remember several great debates in the Senate in past years on the question of how far Congress could go by statute to compel a witness to testify against himself. As I understand the amendment, if this bill is passed, there will be no restriction upon the authority and power of any Federal court or any Federal administrative body to compel the testimony of a witness? The breadth of the amendment raises the issue of possible conflict with the fifth and sixth amendments.

Mr. McCLELLAN. No; there are certain procedural restrictions.

Mr. COOPER. Procedural restrictions?

Mr. McCLELLAN. Yes. But it is not limited to a particular class of cases, like kidnaping or robbery or murder. Perhaps the Senator has that in mind. It covers all categories of crime.

Mr. COOPER. Title VII refers to Litigation Concerning Sources of Evidence. Does it affect existing practice where a defendant claims the Government's evidence is inadmissible because it was discovered through an improper electronic surveillance conducted before the 1st of June 1968?

What does the House bill do with respect to title VII?

Mr. McCLELLAN. The House has modified it by making it applicable only to electronic surveillance. Also, it is limited to surveillance that occurred prior to June 1968, the date on which title III of Public Law 90–351 was enacted.

Mr. COOPER. The situation about it is that——

Mr. McCLELLAN. Electronic surveillance subsequent to that time is controlled by the 1968 act, where the disclosure standard is the same as it was set out in title VII. See Senate Report No. 1097, 90th Congress, second session at 106 (1968). When the Senate passed title VII, it was not limited to electronic surveillance, so it was necessary to make it apply to acts occurring after 1968. This new language applies, however, only to surveillance prior to 1968.

Mr. COOPER. This title would limit the volume of tapes or the record of the surveillance which would be made available to the defendant.

Mr. McCLELLAN. Anything now if it was taken prior to 1968. The Senator can appreciate that there are cases where, if everything was made available, it would cause a great deal of trouble.

Mr. COOPER. Let me ask a question about title 10. We are about to vote on an important measure, and there are questions which deserve attention.

Title 10 refers to Dangerous Special Offender Sentencing. Does it mean that if an individual is tried and is convicted for a third felony then an additional sentence could be imposed upon him by the court?

Mr. McCLELLAN. Yes; that is correct, up to 25 years. The Senate had fixed the period as 30 years. The House cut it down.

Mr. COOPER. Does it provide also that if, after having been convicted of a felony, the court should determine that he had been engaged in a pattern of conduct which indicated that he was a professional criminal or a participant in an organized criminal conspiracy——

Mr. McCLELLAN. It does in part provide that, but I point out to the Senator that this is on the basis of a hearing before the court. Today, the court may take into consideration anything in the world it wanted to in setting a sentence, any kind of hearsay or anything else, and, without any standards at all, impose a sentence, but this provides a standard and requires a hearing on imposition of these additional or aggravated penalties for the offense.

Mr. COOPER. A hearing on which the court could impose an additional 25 years?

Mr. McCLELLAN. Up to 25 years in lieu of. But that would be true if the individual met the standard set out in the statute.

Mr. COOPER. I think that answers my questions. I am not on the committee, and have not had a chance to study the bill as amended by the House.

On this short colloquy. I am not able to suggest that if a court can impose an additional penalty, up to 22 years upon an individual as a professional criminal through a hearing, without any trial by jury serious institutional questions are raised.

Mr. McCLELLAN. There is nothing really new in this, I might say to the Senator. Twenty-three States give life sentence to a recidivist. Often the sentence is mandatory. But here is the difference: Now, as the Senator knows, the court can without review take into account whatever it wants to in affixing the amount of the sentence when it has discretion in the case. But here if this procedure is undertaken, the defendant is entitled to a hearing and representation by counsel, and the court hears the matter; so he is not denied due process. And the penalty is not mandatory.

I might say this to the distinguished Senator: The American Bar Association endorsed this provision of the bill, and I believe they recommended that, inter alia, instead of 30 years, 25 years be the limit, and the House of Representatives accepted that.

I have no quarrel with what the House did on this measure.

Mr. COOPER. I thank the Senator. I know of his great interest and his effort in this subject. I know that almost everyone in the country is concerned about crime. I am, and all of us are. But because I have in past year, raised these questions about the balance, if it can be attained, between the rights of an individual and the rights of society, I have in this very slender and incomplete way raised again the same question. I know they will be tested in the courts, a great many of the issues, and I would have to say, upon a very brief look at the bill, that some of these provisions are of doubtful constitutionality.

That is quite a bit for me to say, but I think so.

Mr. McCLELLAN. Very well. I was very glad to give the Senator the answers as far as I could.

Here is the situation: I have concluded that there is not enough difference, actually, between the House bill and the Senate bill to go to a conference—taking into account that we would have additional delay, and perhaps a deadlock in the end. There is just not that much difference. I would say 90 percent of the force and efficacy of the Senate bill is retained by the House amendments, and some of the House amendments were good. They were constructive, and we have no objection to them.

Mr. FANNIN. Mr. President, I had hoped that the tragedy at the University of Wisconsin when an innocent man was killed in a bombing would somehow result in a slackening of terrorist activity in our Nation.

But now we have the bombings on the west coast and the explosions today which damaged five buildings, including two churches, in New York.

It has become obvious the senseless destruction of property and lives will continue until strong action is taken by law enforcement authorities. We must

give these authorities the power they need.

I urge that we complete action quickly on antibombing measures which are still pending either here or in the House.

By accepting the House amendments to S. 30, the Organized Crime Control Act, we would be taking a step in the right direction. It would strengthen the law on the distribution and misuse of explosives.

The sooner we get tough with these terrorists, the sooner we can restore peace and security to our churches, our public buildings, and our campuses.

We cannot be too harsh in dealing with this type of crime. There is no greater criminal than the person who destroys property and kills innocent people in trying to overthrow our Government.

Mr. DOLE. Mr. President, passage by the House of Representatives of an amended version of S. 30 is a most welcome if somewhat belated action.

It is impossible to overstress the importance of S. 30's legislative attack on organized crime. This is especially true in the light of recent studies on organized crime, including that of the President's Commission on Law Enforcement and the Administration of Justice, which have identified its alarming expansion into the field of legitimate business. This penetration of industry poses two distinct but related dangers: First, the economic strength of organized crime is perpetuated and enhanced when tainted proceeds are invested in legitimate enterprises. Second, the free channels of trade are threatened by organized crime's propensity to obtain monopoly control of areas it enters by whatever means are available, including terror and strongarm tactics.

The techniques and methods used in the infiltration of legitimate business enterprises are many and varied. A few case histories will demonstrate how easily a business can fall captive.

The New York Times edition of June 29, 1969, reported how a New Jersey organized crime leader, Gene Catena, gained a foothold in a detergent manufacturer's business, North America Chemical Corp., of Patterson, N.J., by serving as a sales consultant. According to testimony released by the New York Harbor and Waterfront Commission, the owner of the detergent manufacturing company hired Catena's sales agency, called Best Sales, in 1964 under a 10-year contract which was not subject to cancellation. Catena and Best Sales thereafter, through the medium of arson and murder, attempted to force the A. & P. Tea Co. to buy a detergent that the company had previously tested and rejected.

Another method used to acquire control is to corner a market on essential goods or services and then to withhold them from the legitimate businessman until he surrenders an interest in his business or makes a related economic concession. This method is illustrated by recent testimony released by the New York State Investigation Commission. In one case an executive of a major New York meat concern was compelled to use an organized crime controlled knife grinder service or face the loss of his pork supply which was controlled by a leader in organized crime, Paul Gambino.

Although prosecutions and convictions of leaders or organized crime and their confederates are increasing each year as the Federal Government's organized crime program gains momentum, it is becoming increasingly apparent that convictions of underworld figures remove them from control of syndicated enterprises but do not reach the property interests of the syndicate. Control passes to another organized crime leader and the financial structure remains intact.

Title IX of the Organized Crime Control Act, as passed by the Senate in January and by the House last week, contains a proposal designed to curtail—and eventually to eradicate—the vast expansion of organized crime's economic power. Broadly speaking, this title would create strict criminal penalties for using the proceeds of racketeering activity to acquire an interest in businesses engaged in interstate commerce, or to acquire or operate such businesses by racketeering methods.

In addition, this title, by utilizing remedies heretofore applicable in the antitrust field—the remedies of injunction, dissolution, divestiture, and reorganization—would forge a weapon for putting the syndicate out of business. By removing leaders of the organized crime from positions of ownership, by preventing them and their associates from regaining control, and by visiting heavy economic sanctions on their predatory business practices, this legislation will prove an effective deterrent to further expansion of organized crime's economic power.

This and the other titles in S. 30, ranging from special grand juries and a comprehensive immunity provision to a central attack on illegal gambling and enhanced sentences for special dangerous offenders, has emerged with few significant changes by the House. We would dispense with the time-consuming and unnecessary Senate-House conference. Instead we should unanimously accept S. 30 as amended in the House and send it directly to President Nixon for his signature.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arkansas.

The motion was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCLELLAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONTINUING APPROPRIATIONS, 1971

Mr. RUSSELL. Mr. President, I ask that the Senate proceed to the consideration of House Joint Resolution 1388, which is the resolution providing for continuing appropriations for fiscal year 1971.

The PRESIDING OFFICER. The Senate will be in order.

The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

Calendar No. 1298, House Joint Resolution 1388, a joint resolution making further continuing appropriations for the fiscal year 1971, and for other purposes.

Mr. RUSSELL. The Committee on Appropriations, at its meeting on October 6, approved the resolution without amendment and ordered it reported to the Senate. A copy of the resolution and the report is before each Senator.

As Members are aware, the purpose of these continuing resolutions is to enable the departments and agencies of the Federal Government to function in the absence of new obligational authority for the current fiscal year, 1971. This is the third such resolution this session and the Members will note that the expiration date has been changed from October 15, 1970, to the sine die adjournment of the second session of the 91st Congress.

As explained in the committee report, a special provision has been included in this resolution—to increase the advance appropriation for the food stamp program, provided in the Second Supplemental Appropriation Act, 1970, from $300 million to $600 million. As enacted in the second supplemental bill, the advance appropriation of $300 million was to be charged to the amount appropriated under the food stamp program in the Department of Agriculture and related agencies appropriation bill, 1971—H.R. 17923—which is still awaiting a meeting of the House and Senate conferees. As a result, the increase of $600 million and the extension of the period of availability from October 31, 1970, to January 31, 1971, provided in the resolution, is a necessary accommodation to the realities of the situation.

For the information of the Senate, I wish to report on the current status of the fiscal year 1971 appropriation bills:

The District of Columbia appropriation bill; the Department of the Interior and related agencies appropriation bill; the Office of Education appropriation bill; the legislative branch appropriation bill; the Departments of Treasury and Post Office and Executive Office appropriation bill; and the public works appropriation bill have been signed by the President.

The Departments of State, Justice, Commerce, the judiciary, and related agencies appropriation bill has cleared the Congress.

The Department of Agriculture and related agencies appropriation bill, as I mentioned earlier, is still awaiting action by the House and Senate conferees and this, in turn, is dependent upon passage of authorizing legislation.

The military construction appropriation bill was reported by the Senate committee on Friday, October 9, and will receive consideration in the Senate tomorrow, I understand.

The Departments of Labor and Health, Education, and Welfare appropriation bill was marked up in subcommittee on October 8 and will be considered by the full committee this afternoon.

The remaining bills to be considered by the committee are: The Department of

Defense appropriation bill, which was passed by the House of Representatives on October 8 and referred to the Senate on October 9; the Department of Transportation appropriation bill; and the foreign assistance appropriation bill. This latter bill is delayed pending passage of the Foreign Military Credit Sales Act. In addition, the new independent offices and Department of Housing and Urban Development appropriation bill, and the final supplemental appropriation bill will be reported to the House of Representatives after the recess and considered by the Senate committee upon referral.

I believe this is a full presentation, Mr. President, and I shall be happy to answer any questions. But, let me conclude by saying that it is the opinion of the committee that the extension of the expiration date to the sine die adjournment of the Congress is a realistic one, and I urge its adoption.

Mr. COOPER. Mr. President, may I inquire what the bill is? What is being continued?

The PRESIDING OFFICER. This is the continuing resolution.

Mr. RUSSELL. Activities and programs of the Department of Defense, the Department of Agriculture, the Department of Transportation, the Departments of Labor, and Health, Education, and Welfare, foreign aid, military construction, and all of the various items that go into the independent offices—HUD appropriative bill.

Mr. COOPER. May I ask if the Military Sales Act is included in this resolution?

Mr. RUSSELL. No, it is not. I do not think that has been authorized as yet for this year.

Mr. COOPER. That is correct. This resolution does not, then, include the Military Sales Act?

Mr. RUSSELL. This continuing resolution does not authorize reinstitution of that program. From the legislative standpoint, that program is without funds until there is some authorizing legislation.

Mr. COOPER. A bill has passed the House and passed the Senate, and is now in conference.

Mr. RUSSELL. There is nothing here for that program.

Mr. COOPER. I appreciate the Senator's response. If there were a continuing resolution which, either alone or in a group, included the Military Sales Act, then I would have to object. It would have to be approved unanimously.

I thank the Senator.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. COOK. Mr. President, will the Senator from Georgia yield?

Mr. RUSSELL. I yield to the Senator from Kentucky.

Mr. COOK. I would hope, before final action is taken on this matter, that we might have a quorum call, because it is my understanding that the Senator from New Jersey (Mr. CASE) wanted to be present. We have contacted his office, and we hope he is on the way.

Mr. RUSSELL. Does the Senator wish to suggest the absence of a quorum?

Mr. COOPER. Mr. President, I am advised that the Senator from New Jersey has withdrawn his objection.

Mr. BIBLE. Mr. President, will the Senator from Georgia yield?

Mr. RUSSELL. I yield to the distinguished Senator from Nevada, who handles this measure in the subcommittee.

Mr. BIBLE. I did not handle the joint resolution, but I did handle one of the items mentioned by the distinguished chairman of the full Appropriations Committee, and that was the transportation appropriation bill.

I had some inquiries earlier from both the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from New Jersey (Mr. CASE) concerning this problem. I believe that a letter from the Comptroller General satisfied their questions, and I only wanted to be sure that they had been notified that the matter was about to be considered. In fairness, I feel obligated to do that.

Mr. RUSSELL. I am advised that the Senator from Wisconsin has been notified for some time.

Mr. BIBLE. The Senator from New Jersey is in the Chamber, of course.

Mr. RUSSELL. They have been notified that this would be taken up, and the Senator from New Jersey does not intend to press his objection.

Mr. BIBLE. Mr. President, I am advised by our very capable staff people, who monitor the floor when these bills are called up, that the Senator from Wisconsin has indicated he would do everything he could and wanted to be here if at all possible. I do not know what his commitments are, but I feel duty bound, in view of my conversations with both the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from New Jersey (Mr. CASE), in fairness to them, to notify them that this continuing resolution has been called up, because they asked me to do so.

Mr. RUSSELL. 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. BOGGS). Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I shall be brief. I do not intend to ask for any action but I would like to make my statement concerning the continuing resolution.

SST SPENDING AND THE CONTINUING RESOLUTION

Mr. President, the continuing resolution, Public Law 91–294, provides that whenever one of the listed annual appropriation bills has been passed by only one House, the particular activity shall be carried on "at a rate for operations not exceeding the current rate or permitted by the action of the one House, whichever is lower."

In the case of the SST, the Department of Transportation advises that the obligations schedule for the first 5 months of this fiscal year is as follows:

[In millions of dollars]

July 1970 (actual)	23.8
August 1970 (actual)	23.8
September 1970 (estimated)	23.8
October 1970 (estimated)	20.7
November 1970 (estimated)	21.5

The House report on the continuing resolution, House Report No. 91–1220, makes it clear that in speaking of current rate, Congress referred to the fiscal year 1970 rate. As the House report states—page 3:

> The whole thrust of the resolution is to keep the Government functioning on a minimum basis until funds for the full year are otherwise determined upon.

For fiscal year 1970, Congress appropriated $85 million for the SST program. If the obligations rate for the SST for this fiscal year under the continuing resolution were determined by this alone, it is clear that $23.8 million per month is well in excess of a pro rata allocation of $85 million into 12 monthly periods.

Even on a total appropriation basis, by the middle of October of 1970 the $85 million will have been equalled and surpassed. Thus, if the fiscal 1970 appropriation of $85 million is the controlling figure, the Department of Transportation would surpass the limits set by the continuing resolution long before Congress returns from its election day recess.

However, the DOT also had an additional $99 million carryover from fiscal 1969 that it obligated in fiscal 1970. Should this count in the fiscal 1970 rate? I wrote him and asked him about it. The Comptroller General of the United States believes that it should. My own view is that the Comptroller General is wrong. The continuing resolution is ambiguous.

But this is not the main point, Mr. President. This issue should never have arisen in the first place. The Senate has had the DOT appropriations bill before it since May 28 of this year. It has had ample time to act on this bill. In fact, a number of other appropriations bills that were sent over by the House since May 28—including public works, agriculture, and the District of Columbia appropriations bills—have been acted upon by the Senate. But not DOT.

This should certainly not put Congress in the position of being mandated or morally bound to fund the SST when we come back from our recess, on the ground that we have already spent heavily in this fiscal year. I hope we will not be confronted with the argument that we might as well go ahead. On the basis of the record, it seems to me that argument cannot be made convincingly.

Mr. President, I regret very much that this issue has arisen at all. I believe that the Comptroller General has not interpreted the continuing resolution properly, and not in accordance with the intent of Congress.

Of course, we will abide by his decision. But this delay, and the fact that this issue had to be referred to the Comptroller General, does not in my opinion serve the public interest.

Mr. President, I ask unanimous consent to have the letter from the Comptroller General printed in the RECORD. The letter does contradict my opinion.

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

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., October 9, 1970.

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

DEAR SENATOR PROXMIRE: Reference is made to your informal inquiry of October 7, 1970, questioning whether the Department of Transportation (DOT) has thus far in fiscal year 1971 incurred obligations in connection with the Supersonic Transport (SST) project in excess of the amount authorized by Public Law 91-294, approved June 29, 1970, as amended, making continuing appropriations for the fiscal year 1971.

Question arises by reason of the fact that the appropriation bill providing funds for the fiscal year 1971 for DOT has been passed only by the House of Representatives and, consequently, the funds currently available to DOT are those provided by Public Law 91-294.

Section 101(a) of Public Law 91-294 provides for the appropriation of—

"Such amounts as may be necessary for continuing projects or activities (not otherwise specifically provided for in this joint resolution) which were conducted in the fiscal year 1970 and for which appropriations, funds, or other authority would be available in the following Appropriation Acts for the fiscal year 1971

* * * * *

"Department of Transportation and Related Agencies Appropriation Act;

* * * * *

"Whenever an Act listed in this subsection has been passed by only one House * * * the pertinent project or activity shall be continued under the appropriation, funds, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower * * *."

The amount available to DOT for the SST project in fiscal year 1970 amounted to $184,000,000, consisting of an appropriation in the sum of $85,000,000 and a carry over from previous years of $99,000,000.

Currently, the Department of Transportation and Related Agencies Appropriation Act, H.R. 17755, which was passed by the House of Representatives on May 27, 1970, provides the amount of $289,965,000 for the SST project for the fiscal year 1971 as requested in the President's budget. There also was an unobligated balance of $23.3 million carried forward into 1971 from prior years.

In view of the provisions of Public Law 91-294 quoted above, since the amount provided in the House passed bill exceeded the amount available during fiscal year 1970, the SST project, beginning July 1, 1970, is authorized to be continued under the appropriation "at a rate for operations not exceeding the current [fiscal year 1970] rate."

For the purposes of the question you have raised we think it is proper to consider both the appropriation for 1970 of $85,000,000 and the carry over from previous years of $99,000,000 as the total amount available for "operations" during the fiscal year 1970. The estimated unobligated balance at the end of each fiscal year is disclosed in the annual budget as being available for the ensuing budget year.

We have been advised that the amounts obligated monthly for the SST program for fiscal year 1970 and those obligations incurred or planned for the first 5 months of fiscal year 1971 are as follows:

[In millions]

Obligations by month:	
July 1969	$8.7
August	7.0
September	7.8
October	9.9
November	11.0
December	14.9
January 1970	17.0
February	19.5
March	21.0
April	1.0
May	19.1
June	23.8
July	23.8
August	23.8
September (estimated)	23.8
October (estimated)	20.7
November (estimated)	21.5

In our decision of December 6, 1963, B-152554, there was considered a similar question which arose under a similar joint resolution providing for continuing appropriations which involved the continuation of a project "at a rate for operations not in excess of the current rate or the rate provided for in the budget estimates, whichever is lower * * *."

In that case the budget estimates exceeded the funds available to the agency for the previous fiscal year. With respect to whether the expenditures made were within the limitations of the joint resolution we stated therein, in part, as follows:

"'Rate' has been defined as a price or amount stated or fixed on anything with relation to a standard, a fixed ratio, a settled proportion. *City of Chicago* v. *Illinois Commerce Commission*, 150 N.E. 2d 776. The language 'current rate' as used in subsection 101(b) might at first glance be viewed to mean the rate of operations for the corresponding month of fiscal year 1963, or as 1/12 of the appropriations for 1963, or the month of June 1963, or some other portion of the appropriations for 1963. The only standard, fixed ratio, or settled proportion provided for therein with which the 'current rate' is to be related is 'the rate provided for in the budget estimate.' Since the budget estimate is for a full fiscal year it follows that the 'current rate' may have been intended to mean the rate of operations which was carried on within the appropriations for the entire fiscal year 1963. There is some legislative history of the instant joint resolution to support this view. Therefore while obligations incurred by an agency during any particular month may exceed the June 1963 obligations, 1/12 of obligations incurred for fiscal year 1963, or obligations incurred during some other portion of fiscal year 1963, it does not necessarily follow that there has been a violation of subsection 101(b). Variations in the monthly or quarterly obligations are recognized in the apportionment procedures authorized by the antideficiency act, section 3679, Revised Statutes, as amended, 31 U.S.C. 665. Any mathematical formula not recognizing such variations in the many complex governmental programs would not seem practicable. While the legislative intent of the term 'current rate' is not clear, we are inclined to the view that the requirements of subsection 101(b) have been met where an agency can establish that it is operating under a flexible plan that would enable continuation of activities throughout the fiscal year 1964 within the level of the appropriations available during the preceding fiscal year or as provided in the budget estimate, whichever is lower. The guide for agencies restricted to the current rate generally should be the pattern of obligations incurred during the fiscal year 1963. Once the appropriation act has been enacted, expenditures must be charged to the applicable appropriation, as required by section 103 of Pub. L. 88-55."

What was stated therein appears to be equally applicable to the question now under consideration.

While the use of the June 1970 rate of obligations if continued monthly through fiscal year 1971 would exceed the amount available to DOT in fiscal year 1970, DOT has advised us that the SST program plan of operations for this fiscal year is flexible dependent on when its request for appropriations is approved. Under this plan, if DOT's request for appropriations is approved prior to November 30, 1970, in the amount requested, obligations under the SST program will be increased over the existing monthly rate. If approval is deferred by Congress and the DOT must continue under the authority of the Joint Resolution, obligations under the SST program will be severely curtailed to reflect necessary program changes resulting from deferral of work. The plan provides for continuance of the SST program throughout the fiscal year 1971 at a rate which will permit the obligations to exceed the amount of the appropriations available for this purpose during fiscal year 1970 nor would the obligations in any one month exceed the obligations incurred during June 1970. While the program if continued throughout fiscal year 1971 under the continuing resolution would have to be substantially curtailed during the last seven months, we cannot say that the Department has not complied with the criteria contained in our December 6, 1963, decision or that it has violated Public Law 91-294, the continuing resolution.

Sincerely yours,

R. F. KELLER,
Assistant Comptroller General of the United States.

Mr. BIBLE. Mr. President, I shall be equally brief. The Senator from Wisconsin has had the letter printed in the RECORD. The letter from the Comptroller General of the United States, as he candidly and frankly and in all honesty says, contradicts his position.

I think that the position of the Comptroller General is correct on the allocations that are made for the Department of Transportation insofar as they involve the supersonic transport which is the problem involved in this discussion today.

Mr. President, I have been in communication with both the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from New Jersey (Mr. CASE). The Senator from New Jersey is a member of the Transportation Subcommittee and sat very faithfully through these long and extended hearings.

I am very happy that the Senator from Wisconsin has had the official opinion of the Comptroller General of the United States printed in the RECORD. It speaks for itself. He concludes in his last sentence that there is no violation of the public law in the manner in which DOT has expended its money under the continuing resolution.

We have had many problems in our appropriations bills this year.

The Senator from Wisconsin does state correctly that the bill was referred to the Senate on May 28. It is still under the active consideration of the subcommittee. It is my intention as the acting chairman of that subcommittee to complete action on the measure as soon as we return in November.

It is not only the transportation bill that is late. I notice that the foreign assistance bill was finally approved in the House and received in the Senate on

June 5. The military construction bill—which I have also inherited as acting chairman—did not come to us on this side until June 15.

There are other extenuating circumstances that I think make an excellent record for the care and the deliberation and the studious efforts we have attempted to exercise in the consideration of this measure.

Actually, perhaps, it works out for the best. We have had, as late as mid-September, an additional request from the President for funds for air security guards, which involves additional legislation and controversy. We took testimony on September 17. We also heard another request involving funding for an oil pollution fund. That also came to us in mid-September.

We have completed our hearings on these matters, and we hope to move this forward very quickly after we return on November 16.

CONTINUING RESOLUTION MEANS A LOT TO SCHOOL MILK PROGRAM

Mr. PROXMIRE. Mr. President, today as we consider House Joint Resolution 1388, making continuing appropriations until final adjournment of this Congress, I want to make it clear that the resolution means a continuation of the special milk program for schoolchildren. This clarification should not be necessary, but it has come to my attention that a number of school districts have been reluctant to resume the program in the belief that it may be terminated at an early date.

This is furtherest from the truth. The Secretary of Agriculture issued instructions that the program was to be continued on a business as usual basis on September 8. The Congress has provided funds for the program under continuing resolutions and will do so until the Agriculture Appropriations bill is acted upon.

Consequently no school administrator need hesitate to participate in the special milk program for fear that the Federal Government will not pay in their fair share.

The PRESIDING OFFICER. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 1388) was ordered to a third reading, was read the third time, and passed.

Mr. MAGNUSON. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. JACKSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EQUAL RIGHTS FOR MEN AND WOMEN

The Senate resumed the consideration of the joint resolution (H.J. Res. 264) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Mr. BAYH. Mr. President, the pending order of business, House Joint Resolution 264, in my opinion has been debated for quite some time now. We have facing us a recess, then an election, and then what some have described as a lame-duck session.

I would like to test the temper and the sincerity of the Senate relative to voting up or down the important measure pending before the Senate.

I realize that all Senators do not look at this matter as the Senator from Indiana does, but I am hopeful that the Senate will not be denied the opportunity to vote on this important piece of legislation as it has been denied thus far. Earlier this year it was and is thus far, still being denied the opportunity to vote on Senate Joint Resolution 1, another important constitutional amendment which was debated at some length.

I am hopeful that after the recess and after the election we will have an opportunity to return once again to the consideration of the measure which was put aside following two cloture votes, the proposal for electoral reform.

I would hope that the Senate could deal more responsibly with the equal rights amendment than it did with the electoral reform amendment.

Mr. President, I note that my friend, the Senator from North Carolina, is on the floor at this time. I would therefore like to propound a unanimous-consent request.

UNANIMOUS-CONSENT REQUEST

Mr. President, I ask unanimous consent that, starting at the close of the morning hour on tomorrow, we consider the amendments presently submitted, plus any others that Members of the Senate may be inclined to submit; that there then be a time limitation of not to exceed 2 hours on each amendment, the time to be equally divided between the proponent of each amendment and the Senator from Indiana; that following consideration of the final amendment, we proceed to the third reading of the resolution itself; that a time limitation of not to exceed 4 hours be allocated for the consideration of this measure, the time to be equally divided between the Senator from Indiana and the Senator from North Carolina; and that we dispose of this matter once and for all, up or down.

Mr. ERVIN. Mr. President, reserving the right to object, the truth is that this matter is of such importance that it should go over until after the recess.

The disinguished senior Senator from Massachusetts (Mr. KENNEDY) and the distinguished junior Senator from Maryland (Mr. MATHIAS) have publicly announced that they have an amendment which they propose to offer to this measure to give full representation in the Congress of the United States to the District of Columbia.

The distinguished Senator from Massachusetts (Mr. KENNEDY) is engaged in a reelection campaign at this time, and he has announced, as I understand it, that he would prefer to offer this amendment after the election. I would not be willing to cut off his opportunity to do so. I think other Senators have amendments.

As I recall, on one rollcall vote last week, 43 Senators were absent. I do not think the Senate should be passing on constitutional amendments when that many Senators are absent. I do not think we should be passing on such serious matters as this proposal when 34 Members of the Senate are running for reelection and necessarily have their minds engrossed with that matter.

Now, for these reasons I object to the unanimous-consent request of the distinguished Senator from Indiana. I wish to assure the distinguished Senator from Indiana that I will call up an amendment in a moment and give the Senate the privilege of voting on it very speedily, although I consider it a very important amendment.

The PRESIDING OFFICER. Objection is heard.

Mr. BAYH. I appreciate the fact that my friend and colleague from North Carolina has exercised his right under the rules of the Senate, but I think it is important for the Senate and the country to know that once again the Senate is being denied the opportunity to conduct its business.

I, for one, do not want to foreclose the right of any Senator to submit an amendment to this legislation or any other legislation, but it seems to me the Senate has to do its work. I made the unanimous-consent request so that the RECORD can be absolutely clear as to what is happening.

Surely, this is important legislation, but we are sitting here permitting it to be put aside to take up other business; and it seems to me that if we are to be responsible, we should dispose of the business before us. I think it is important business. Some other people disagree. Let us let the Senate work its will and vote the matter up or down and not become embroiled in another filibuster and deny the Senate the opportunity to vote on an important piece of legislation.

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

Mr. BAYH. I yield.

Mr. COOK. Mr. President, I suggest that on the amendment the distinguished Senator from North Carolina is talking about, amendment No. 1033, there are some 14 cosponsors. It would seem to me that out of 14 Senators a logical argument for or against the amendment could be made to the Senate.

I am wondering if we are in a position where the entire Senate really is going to be ground to a halt because one out of 14 sponsors to an amendment is not here.

Mr. BAYH. Mr. President, I do not know whether I have the floor.

The PRESIDING OFFICER. The Senator from Indiana has the floor.

Mr. BAYH. Mr. President, I would like to propose another unanimous-consent request. I think it is rather unfair to suggest the burden of the present hiatus rests on the back of one Member of the Senate.

Perhaps, without bothering the Senate with a unanimous-consent request, let me ask my friend, the Senator from North Carolina, this question. If the Senator from Indiana were to exclude the amendment of the Senator from Massachusetts from the unanimous-consent request would the Senator from

North Carolina be inclined not to object to that unanimous-consent request?

Mr. ERVIN. Mr. President, the Senator from North Carolina has several amendments himself of great importance and we have not discussed a single one of them yet.

The Constitution has endured for 181 years without this particular amendment, and I think the Constitution can endure for a few more days until we have time for adequate consideration of the amendment by all Members of the Senate.

Does the Senator from Indiana propose to have an agreement made that the amendment of the distinguished Senator from Massachusetts shall be postponed until after the recess?

Mr. BAYH. No. The Senator from Indiana was trying to make the record very clear that it is all right for us to talk about this being an important constitutional amendment and that we should not amend the Constitution hastily. The Senator from Indiana, as chairman of the Subcommittee on Constitutional Amendments, feels as strongly about this matter as the Senator from North Carolina. But the matter before us did not pop into view in the last week or so that we have been discussing it on the floor of the Senate; it has been a matter of concern for a number of our citizens and pursued by certain Members for 47 years. This is not a new subject. The record will show that by hook or crook there are some who want to exercise their rights, and I do not criticize them, but I do want to wipe away this veneer. I do not wish to prohibit consideration of the Senator's amendments, but I think the time has come to vote on them and to stop this business of the dragging of feet and filibustering.

Mr. ERVIN. I would say to the Senator from Indiana that the Senator from North Carolina never hides behind veneer or anything else. The Senator from North Carolina has maintained all the time that when 34 Senators are out campaigning for reelection and when the Senate last week was able to muster on votes on important issues just barely over a quorum, matters of this importance should go over until after the recess.

But the Senator from North Carolina is prepared to send forward an amendment, and does send forward an amendment and asks that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

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 within seven years of the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. This article shall not impair, however, the validity of any law of the United States which exempts women from compulsory military service.

"SEC. 2. The Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

"SEC. 3. This amendment shall take effect two years after the date of ratification."

Mr. ERVIN. Mr. President, I am perfectly willing and, in fact, I make the unanimous-consent request that the Senate proceed to a vote on this amendment at 10 o'clock in the morning.

The PRESIDING OFFICER. What time did the Senator say?

Mr. ERVIN. At 10 a.m., or at the end of the morning hour in the morning.

The PRESIDING OFFICER. Is there objection?

Mr. COOK. I object.

Mr. BAYH. Reserving the right to object——

Mr. COOK. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. COOK. We have plenty of opportunity to hear the arguments today.

Mr. ERVIN. The Senator from North Carolina is ready to vote on this amendment at 5 o'clock this afternoon, provided we have a rollcall vote.

Mr. BAYH. Mr. President, if the Senator from North Carolina wishes to propose that unanimous-consent request the Senator from Indiana would not object to 5 o'clock or 4:30, with the time equally divided.

Mr. ERVIN. The Senator from North Carolina will vote at 5 o'clock, provided he can get a rollcall vote on the amendment.

I do not believe there are enough Senators present to grant that request for the yeas and nays.

Mr. BAYH. Why not make a unanimous-consent request?

Mr. ERVIN. I am opposed to getting the yeas and nays by a unanimous-consent request because the Constitution provides that they be ordered on the request of 20 percent of the Members present, or substantially that number, I believe. I do not want to violate the Constitution. I would like Senators to know what we are voting on.

I will make a unanimous-consent request that we vote on this pending amendment immediately after the morning hour; and I make this unanimous-consent request for the second time in the hope that he who objected to it the first time will not interpose a second objection.

Mr. BAYH. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BAYH. Mr. President, if the Senator would permit us to proceed more expeditiously, perhaps he will accept this unanimous-consent request:

Mr. President, I ask unanimous consent that we vote on the pending amendment no later than 5 o'clock this afternoon; that the time be equally divided between the Senator from North Carolina and the Senator from Indiana; and that prior to a vote the yeas and nays be ordered; and that a vote not be taken until a sufficient number of Senators have indicated their presence by seconding a yea and nay vote on the amendment.

Mr. ERVIN. Mr. President, I believe it would be more appropriate to vote on the amendment in the morning. For that reason I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ERVIN. Mr. President, I am astounded that anyone should advocate making women subject to compulsory military service. I happen to believe, in common with the great majority of the American people, that there are physiological and functional differences between men and women, and that these physiological and functional differences between men and women give men a greater physical strength and a greater capacity to endure physical hardships and physical privations.

In saying this, I do not assert that members of either sex are superior to members of the other sex.

I make another affirmation of a conviction I happen to entertain, and that is that when it comes to enduring spiritual and mental stress, women possess a far greater capacity to endure stress of that kind than men do.

I happen to have had the privilege of serving as a doughboy in the First World War. At that time we were required to march long distances and wear on our backs packs containing necessary equipment which weighed somewhere in the neighborhood of 75 pounds and to carry rifles which weighed somewhere in the neighborhood of 8 pounds. We were required to endure warfare in the trenches and to wade in icy water until sometimes our feet broke open and bled, and to endure cold and snow and ice and the other physical hardships which military service imposes.

Frankly, I do not think that women should be compelled to serve in the Armed Forces, and that such service should be confined only to men.

Mr. GRIFFIN. Mr. President, will the distinguished Senator from North Carolina yield for a question?

Mr. ERVIN. Yes; I am delighted to yield.

Mr. GRIFFIN. In order that the Senators can clearly understand the effect of the amendment of the Senator from North Carolina, let me ask: Am I correct in my understanding that, aside from some technical changes having to do with ratification and the effective date, the only substantive change contained in the Senator's amendment has to do with the constitutionality of any law exempting women from compulsory military service. Is that correct?

Mr. ERVIN. That is a correct analysis of this amendment.

Mr. GRIFFIN. Particularly since the Senator's amendment was offered as a substitute, I believe it is important to understand exactly what the amendment would do.

Mr. ERVIN. Yes; and this amendment would not even prohibit Congress from drafting women for compulsory service in the Armed Forces. It merely provides that if Congress does exempt women from compulsory service, the act of Congress so providing would not be held unconstitutional.

In proposing this amendment, the Senator from North Carolina has two motivations.

The first is to protect women from the hardship of compulsory military service, in accordance with the custom which has prevailed in this Nation since it was founded, and I might say in accordance with the custom which has been practiced among all of the races that have contributed their descendants to the population of America since the memory of mankind runneth not to the contrary.

My second purpose is that the United States, if need be, will have the constitutional power to draft men for service into the armed services of the United States in the event the survival of the Nation requires the Congress to do that very thing. If this equal rights amendment has the effect of invalidating every distinction made by law between men and women, as some of its advocates say, that might possibly disable the United States from obtaining sufficient manpower to defend our Nation against the aggressions of a foreign foe.

I do not think Congress is going to be willing, unless it is compelled by a constitutional provision which does not now exist, to draft women for service in the Armed Forces; but if this amendment is adopted, and it is interpreted to mean what its supporters say in the document which I hold in my hand, Congress would not be able, subsequent to the ratification of the amendment, to draft men for service in the Armed Forces of the Nation unless it drafted women for such service on exactly the same terms as it drafted men. Consequently, the Nation might find itself without sufficient manpower in its Armed Forces to defend the Nation against an attack from a foreign aggressor.

Mr. GRIFFIN. Mr. President, if the Senator will yield, am I correct in my understanding that the witnesses who testified in support of the so-called equal rights amendment took the position that it would have the effect, if adopted, of subjecting women to compulsory military service on the same basis as men? That is the interpretation and intent of the principal supporters of the resolution, as I recall.

Mr. ERVIN. That is one of the main reasons given for the approval of the proposed so-called equal rights amendment, in a document called "A Memorandum on the Proposed Equal Rights Amendment to the Constitution," which was printed in the CONGRESSIONAL RECORD on March 25, 1970, at the request of the able and distinguished Representative from Michigan Mrs. GRIFFITHS.

Twice, it states in that memorandum that the equal rights amendment would simply require men and women to be treated the same under the law, and that the proposed amendment would secure the right of all persons to equal treatment under the law without any distinction as to sex. Then it lists the grievances whereof the proponents of this amendment complain, and they have listed among those grievances, as one of the discriminatory laws that they wish to remove, the exclusion of women from the requirements of the Military Selective Service Act of 1967. That is the act which embodies our present draft law. This document not only lists that act as one of the grievances that prompted the proponents of this amendment to urge its adoption, but it also tells us what the amendment will accomplish, and in so doing, it says:

> Women would be equally subject to jury service and to military service.

Mr. GRIFFIN. If the distinguished Senator from North Carolina will yield further. I believe I have heard it argued that while the proposed constitutional amendment would subject women to military service, they would probably serve as typists and perform other noncombat duties. Does the Senator from North Carolina have any comment on that particular point?

Mr. ERVIN. Yes. Today we have laws enacted by Congress which permit women to enlist voluntarily for service in the Armed Forces which is noncombatant in nature. They are permitted to enlist voluntarily for service in the Nurses Corps, in the Women's Army Corps—ordinarily called the WACS—and the naval auxiliary—which is usually called the WAVES.

This type of service is not what the good ladies who support this amendment and demand that women be made subject to the draft are asking for. They want men and women treated exactly alike, and they make this very plain in their statement about military service. They say:

> 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.

In other words in explaining the desirability and necessity for this amendment, the proponents made it as clear as the noonday sun in a cloudless sky, in their arguments in the House of Representatives, that they want, they say, to be drafted.

I might state to the distinguished Senator from Michigan that after I made a speech on the floor of the Senate pointing out what I conceived to be some of the dangers inherent in the adoption of this amendment, I had some ladies who are strong advocates of this amendment ask for permission to explain its purposes to me. I was visited by several very charming ladies, and I called their attention to the fact that this document advocated that women be drafted into the Armed Forces of the Nation to serve on the same terms as the men, and that that meant they would be drafted, if they were capable, for service in combat; and they told me that that was exactly what they wanted.

I thereupon informed them that I had made it a practice never to refer to a lady's age, but I was going to have to depart from my practice on that occasion. I said, "Frankly and in all candor, despite your very youthful appearances, I am compelled to infer that you have passed the draft age by 3 or 4 or 5 months or more, and if you want to convince me that women ought to be drafted for service in the Armed Forces, and particularly for combat service in the Armed Forces, you are going to have to send some charming young ladies within the draft age to convince me of the validity of that position."

So there can be no doubt of the fact that the advocates of this proposal, or at least some of its advocates, cite as one of their grievances that they are not received into the Armed Forces for service on exactly the same terms as those upon which the men serve.

Mr. GRIFFIN. Carrying the explanation a step farther—if the resolution amending the Constitution should be adopted, without the amendment now offered by the Senator from North Carolina, and if Congress thereafter should pass a law providing that women, while subject to military service, would be exempt from service in the infantry, would that be constitutional?

Mr. ERVIN. I do not think it would, because this provision that I propose to insert in the amendment is inconsistent, to that extent, with the rest of the amendment. Without my proposal the amendment which says that equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex, would remain operative, and would prohibit making any legal distinction between men and women of the character suggested by the distinguished Senator from Michigan.

Mr. GRIFFIN. As I understand the situation, then, if the resolution to amend the Constitution were adopted without the Senator's amendment, men and women would have to be conscripted on the same basis and would have to be treated exactly the same in the assignment of duties within the Armed Forces. Apparently, women who are physically qualified to serve in the infantry would have to serve along with men who are physically qualified to fight in the infantry.

Mr. ERVIN. Exactly.

Mr. GRIFFIN. While I generally agree with the objectives of the proposed constitutional amendment, and while I have not agreed with all the arguments against it advanced by the Senator from North Carolina, I must say that I have been disturbed for some time about this particular point.

Frankly, I cannot imagine that a majority of the Members of the Senate will want to provide for the compulsory induction of women into the armed services and require them to perform combat duty on the same basis as men.

Mr. ERVIN. I thank the Senator from Michigan for his observation. I find myself in complete agreement with him, and I find that the document which was inserted in the RECORD in March sustains the position he has elaborated and the position I happen to entertain.

This amendment would alter the original resolution in two other respects. The original resolution provides that this amendment will go into effect 1 year after its ratification. This provision is inserted in the original resolution in order to permit the States—to permit Congress, for that matter, and the legislatures of the 50 States—to make a study of their laws which may make legal distinctions between men and women and to give them an opportunity to alter

those laws before the amendment would invalidate them.

A number of State legislatures do not meet annually; they meet biennially. Manifestly, a State legislature which would not meet until the second year after the ratification of the amendment could not have an opportunity to alter its laws and bring them into harmony with the amendment in the event the amendment is to be interpreted to invalidate State laws which make legal distinctions between men and women on any ground. So the adoption of this portion of my amendment would have a strong tendency to prevent the creation of legal chaos in those States whose legislatures meet biennially instead of annually.

My other proposed alteration of the original purpose of the resolution would require that this resolution be ratified by three-fourths of the States within 7 years after its submission by Congress to them for consideration. This is necessary because we still have floating around some unratified amendments that were submitted at the time of the original submission of the Bill of Rights. We have some other amendments that have been floating around since about 1860. There is no date for their expiration, no time limit for their ratification, and they could be ratified at any time. I do not think it is wise for Congress to submit a proposed constitutional amendment to the States without a time limit upon its ratification.

There has been some discussion on this point by the Senator from North Carolina, and the Senator from North Carolina committed an error in saying that virtually all amendments submitted to the States since Reconstruction had had limits placed upon the time for their ratification. To check on the accuracy of his recollection, the Senator from North Carolina requested the Library of Congress to make a study of the time limitations imposed by Congress upon the ratification of constitutional amendments. He has received this information from the Library of Congress:

> This is in response to the request for a discussion of the recent congressional practice of including in amendments to the Constitution proposed to the States for ratification of time deadlines after which the amendment if unratified is to lapse.

This is very relevant to this provision, because the original resolution proposed in this constitutional amendment puts no time limit whatever for its ratification or for its lapse. Under this resolution, in the absence of some amendment such as that suggested by me, this resolution could float around in space, unratified, for eternity. I think that is very unwise. I think every resolution should contain a time limitation and provide, as does my amendment, that upon the expiration of that time limit, the amendment is to lapse unless it has been ratified. Certainly, any proposed amendment to the Constitution of the United States for which there is any real demand can be ratified by the legislatures of the required number of States within 7 years after the date of its submission.

I resume the reading of the study from the Library of Congress:

> The 18th amendment—national prohibition—was the first proposed amendment to contain a ratification period, 7 years. Prior to its proposal, Congress had sent 21 amendments to the States without deadlines and the States had ratified 17. The remaining four were presumably still pending and viable. Of these four, two were sections proposed by Congress as part of the Bill of Rights in 1789; one had been referred to the States in 1810, and one in 1861.

I digress from reading to say that if the Senator from North Carolina interprets that statement correctly, it was customary in the early days to submit amendments without placing any time limit upon their ratification or lapse. But, starting with the 18th amendment, the prohibition amendment, they began to insert a 7-year limit on the time for ratification.

The Senator from North Carolina now resumes reading from the study of the Library of Congress:

> Thus, a 7-year period was contained in the 18th amendment—in order of ratification—and the constitutionality of the limitation was challenged by one who contended that the inclusion had impaired the validity of the proposal. The challenge was unanimously rejected in *Dillon* v. *Gross*, 256 U.S. 368 (1921). The Court adopted the view that the Constitution impliedly provided that proposed amendments were to remain before the State for ratification for only a limited time and explained why.

Mr. President, I digress from reading to emphasize that statement:

> The court adopted the view that the Constitution impliedly provided that proposed amendments were to remain before the States for ratification for only a limited time and explained why.

Now I give that explanation as set forth in the Dillon case and as quoted in the study in the Library of Congress, as follows:

> We do not find anything in the Article [V] which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. *Supra*, 374–75.

Continuing, the Court noted that it was a far better view to take that amendments must be ratified within a reasonable time than to try to adhere to an opposite view. "[F]or, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe and in our opinion it is quite untenable." *Ibid.*

The Court held, therefore, that the time period for ratification was a question of detail which Congress could in its discretion set.

In 1924, Congress proposed an amendment to the States outlawing child labor. That year one State ratified and one State expressly rejected ratification. In the following year three States ratified, fifteen States expressly rejected ratification and three States considered the amendment but took no action. In 1926, two more States expressly rejected ratification. But in 1933 a new drive for ratification began and fourteen States ratified the proposed amendment. In 1937, the Kansas legislature, which had expressly rejected the amendment in 1925, voted to ratify the 13-year old proposal. For a number of reasons not relevant here this new action became the subject of a court suit.

The Kansas Supreme Court held that despite the passage of time the proposal was still viable. *Coleman v. Miller*, 146 Kan. 390 (1937). The same question was presented in Kentucky and that State's Supreme Court held that the reasonable period of time in which ratification was to be had had expired and that the amendment was no longer viable. *Wise* v. *Chandler*, 270 Ky. 1 (1937). The United States Supreme Court, in *Coleman* v. *Miller*, 307 U. S. 433, 451–454 (1939), held that determination of a reasonable period of time was a question within the province of Congress to determine and that courts could not resolve the issue. When Congress establishes no period in the resolution referring to the amendment, then upon the notification of ratification by the State making up the final one needed to make three-fourths of the States, Congress, in determining whether the amendment was now validly ratified, would have to decide whether too much time had elapsed.

It should be noted that since that date all amendments proposed by Congress have carried a seven-year period specification for ratification.

Mr. President, that time was 1939 and every amendment which has been submitted by Congress to the States since 1939, according to this study, has carried a 7-year period as the time in which the amendment must be ratified or lapse in legal efficacy. Surely the Senate should follow in this case this wise precedent.

Mr. President, I ask unanimous consent to have printed in the RECORD the two decisions by the Supreme Court, *Dillon* v. *Gloss*, 256 U.S. 368 (1921); and *Coleman* v. *Miller*, 307 U.S. 433, 451–54 (1939).

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

DILLON AGAINST GLOSS

ARGUMENT FOR APPELLANT

Mr. Levi Cooke, with whom *Mr. Theodore A. Bell* and *Mr. George R. Beneman* were on the brief, for appellant:

The Eighteenth Amendment is invalid because of the extra-constitutional provision of the third section. Congress has no power to limit the time of deliberation or otherwise control what the legislatures of the States shall do in their deliberation. Any attempt to limit voids the proposal.

The legislative history of the Amendment shows that without § 3 the proposal would not have passed the Senate, Cong. Rec., 65th Congress, 1st sess., pp. 5648–5666; Cong. Rec., 65th Cong., 2d sess., p. 477.

The same taint attended the passage of the amendment in the House, because there what is now § 3 was considered and the limitation changed from six to seven years, and it is impossible to say now that without the

attempted time limitation upon the States two-thirds of the House would have assented to the proposal of the amendment.

The fact that thirty-six States thus ratified within the time emphasizes the evil that was accompanied by the limitation, and can in no way be invoked to suggest that the third section became surplusage in view of this result attained so well within the seven-year limitation attempted to be set by Congress. On the contrary, the fact of there being a time limitation tended to destroy any deliberation by the States and to enable the faction which was pressing for ratification of the amendment to urge immediate indeliberate action in order to avoid the possibility of the time limitation expiring without thirty-six States having made ratification.

The history of the times discloses, if the court may take judicial notice thereof, that legislators elected prior to the submission by Congress were urged to act forthwith, without awaiting the election of legislators by an electorate aware of the pendency of the congressional proposal, and that in some legislatures ratification was secured without debate in the precipitate action urged by the faction advocating the amendment. The speed with which the amendment was disposed of by the state legislatures tends to establish the absence of deliberation; and in any view the fact stands that the States were acting in the presence of a limitation fixed by Congress, violative of Art. V, in terms unheard of in the history of the country, and contrary to any procedure sanctioned by the organic law, with the very nature and structure of which both the Congress and the state legislature were dealing. See 2 Story, Const., 3d ed., § 1830.

The National Prohibition Act should be found to have become effective, if at all, January 29, 1920, a year after ratification of the amendment was proclaimed and made known to the public. The proclamation of the Secretary of State must be treated as the publication of the fact of ratification, under Rev. Stats., § 205, of which all persons may be considered to be charged with knowledge.

Mrs. Annette Abbott Adams, Assistant Attorney General, for appellee.

Mr. Justice Van Devanter delivered the opinion of the court.

This is an appeal from an order denying a petition for a writ of *habeas corpus.* 262 Fed. Rep. 563. The petitioner was in custody under § 26 of Title II of the National Prohibition Act, c. 85, 41 Stat. 305, on a charge of transporting intoxicating liquor in violation of § 3 of that title, and by his petition sought to be discharged on several grounds, all but two of which were abandoned after the decision in *National Prohibition Cases,* 253 U.S. 350. The remaining grounds are, first, that the Eighteenth Amendment to the Constitution, to enforce which Title II of the act was adopted, is invalid because the congressional resolution, 40 Stat. 1050, proposing the Amendment, declared that it should be inoperative unless ratified within seven years; and, secondly, that, in any event, the provisions of the act which the petitioner was charged with violating, and under which he was arrested, had not gone into effect at the time of the asserted violation nor at the time of the arrest.

The power to amend the Constitution and the mode of exerting it are dealt with in Article V, which reads:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments of this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

It will be seen that this article says nothing about the time within which ratification may be had—neither that it shall be unlimited nor that it shall be fixed by Congress. What then is the reasonable inference or implication? Is it that ratification may be had at any time, as within a few years, a century or even a longer period; or that it must be had within some reasonable period which Congress is left free to define? Neither the debates in the federal convention which framed the Constitution nor those in the state conventions which ratified it shed any light on the question.

The proposal for the Eighteenth Amendment is the first in which a definite period for ratification was fixed.[1] Therefore twenty-one amendments had been proposed by Congress and seventeen of these had been ratified by the legislatures of three-fourths of the States—some within a single year after their proposal and all within four years. Each of the remaining four had been ratified in some of the States, but not in a sufficient number.[2] Eighty years after the partial ratification of one an effort was made to complete its ratification and the legislature of Ohio passed a joint resolution to that end,[3] after which the effort was abandoned. Two, after ratification in one less than the required number of States, had lain dormant for a century.[4] The other, proposed March 2, 1861, declared: "No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of a persons held to labor or service by the laws of said State."[5] Its principal purpose was to protect slavery and at the time of its proposal and partial ratification it was a subject of absorbing interest, but after the adoption of the Thirteenth Amendment it was generally forgotten. Whether an amendment proposed without fixing any time for ratification, and which after favorable action in less than the required number of States had lain dormant for many years, could be resurrected and its ratification completed had been mooted on several occasions, but was still an open question.

These were the circumstances in the light of which Congress in proposing the 18th Amendment fixed seven years as the period for ratification. Whether this could be done was questioned at the time and debated at length, but the prevailing view in both houses was that some limitation was intended and that seven years was a reasonable period.[6]

That the Constitution contains no express provision on the subject is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed.[7] An examination of Article V discloses that it is intended to invest Congress with a wide range of power in proposing amendments. Passing a provision long since expired,[8] it subjects this power to only two restrictions: one that the proposal shall have the approval of two-thirds of both houses, and the other excluding any amendment which will deprive any State, without its consent, of its equal suffrage in the Senate.[9] A further mode of proposal—as yet never invoked—is provided, which is, that on the application of two-thirds of the States Congress shall call a convention for the purpose. When proposed in either mode amendments to be effective must be ratified by the legislatures, or by conventions, in three-fourths of the States, "as the one or the other mode of ratification may be proposed by the Congress." Thus the people of the United States, by whom the Constitution was ordained and established, have made it a condition to amending that instrument that the amendment be submitted to representative assemblies in the several States and be ratified in three-fourths of them. The plain meaning of this is (a) that all amendments must have the sanction of the people of the United States, the original fountain of power, acting through representative assemblies, and (b) that ratification by these assemblies in three-fourths of the States shall be taken as a decisive expression of the people's will and be binding on all.[10]

We do not find anything in the Article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson[11] "that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress." That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal.

Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; [12] and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and the speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questoned considering the periods within which prior amendments were ratified.

The provisions of the act which the petitioner was charged with violating and under which he was arrested (Title II, §§ 3, 26) were by the terms of the act (Title III, § 21)

Footnotes at end of article.

to be in force from and after the date when the Eighteenth Amendment should go into effect, and the latter by its own terms was to go into effect one year after being ratified. Its ratification, of which we take judicial notice, was consummated January 16, 1919.[13] That the Secretary of State did not proclaim its ratification until January 29, 1919,[14] is not material, for the date of its consummation, and not that on which it is proclaimed, controls. It follows that the provisions of the act with which the petitioner is concerned went into effect January 16, 1920. His alleged offense and his arrest were on the following day; so his claim that those provisions had not gone into effect at the time is not well grounded.

Final order affirmed.

FOOTNOTES

[1] Some consideration had been given to the subject before, but without any definite action. Cong. Globe, 39 Cong., 1st sess., 2771; 40th Cong., 3d sess., 912, 1040, 1309–1314.

[2] Watson on the Constitution, vol. 2, pp. 1676–1679; House Doc., 54th Cong., 2d sess., No. 353, pt. 2, p. 300.

[3] House Doc., 54th Cong., 2d sess., No. 353, pt. 2, p. 317 (No. 243); Ohio Senate Journal, 1873, pp. 590, 666–667, 678; Ohio House Journal, 1873, pp. 848, 849. A committee charged with the preliminary consideration of the joint resolution reported that they were divided in opinion on the question of the validity of a ratification after so great a lapse of time.

[4] House Doc., 54th Cong., 2d sess., No. 353, pt. 2, pp. 300, 320 (No. 295), 329 (No. 399).

[5] 12 Stat. 251; House Doc., 54th Cong., 2d sess., No. 353, pt. 2, pp. 195–197, 363 (No. 931), 369 (No. 1025).

[6] Cong. Rec., 65th Cong., 1st sess., pp. 5648–5651, 5652–5653, 5658–5661; 2d sess., pp. 423–425, 428, 436, 443, 444, 445–446, 463, 469, 477–478.

[7] *United States* v. *Babbit*, 1 Black, 55, 61; *Ex parte Yarbrough*, 110 U.S. 651, 658; *McHenry* v. *Alford*, 168, U.S. 651, 672; *South Carolina* v. *United States*, 199 U.S. 437, 45; *Luria* v. *United States*, 231 U.S. 9, 24; *The Pesaro*, 255 U.S. 216.

[8] Article V, as before shown, contained a provision that "No amendment which shall be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article" One of the clauses named covered the migration and importation of slaves and the other deals with direct taxes.

[9] When the federal convention adopted Article V a motion to include another restriction forbidding any amendment whereby a State, without its consent, would "be affected in its internal police" was decisively voted down. The vote was: yeas 3—Connecticut, New Jersey, Delaware; nays 8—New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia. Elliot's Debates, vol. 5, pp. 551, 552.

[10] See *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 324–325; *McCulloch* v. *Maryland*, 4 Wheat. 316, 402–404; *Cohens* v. *Virginia*, 6 Wheat. 264, 413–414; *Dodge* v. *Woolsey*, 18 How. 331, 347–348; *Hawke* v. *Smith*, 253 U.S. 221; Story on the Constitution, 5th ed., §§ 362–363, 463–465.

[11] Jameson on Constitutional Conventions, 4th ed., § 585.

[12] *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 326; *McCulloch* v. *Maryland*, 4 Wheat. 316, 407.

[13] Sen. Doc., No. 169, 66th Cong., 2d sess.; Ark. Gen. Acts, 1919, p. 512; Ark. House Journal, 1919, p. 10; Ark. Sen. Journal, 1919, p. 16; Wyo. Sen. Journal, 1919, pp. 26–27; Wyo. House Journal, 1919, pp. 27–28; Mo. Sen. Journal, 1919, pp. 17–18; Mo. House Journal, 1919, p. 40.

[14] 40 Stat. 1941.

COLEMAN ET AL. *v.* MILLER, SECRETARY OF THE SENATE OF THE STATE OF KANSAS, ET AL.

CERTIORARI TO THE SUPREME COURT OF KANSAS

(No. 7. Argued October 10, 1938. Reargued April 17, 18, 1939.—Decided June 5, 1939)

1. Upon submission of a resolution for ratification of a proposed amendment to the Federal Constitution, known as the Child Labor Amendment, twenty of the forty senators of the State of Kansas voted in favor of its adoption and twenty voted against it. The Lieutenant Governor, the presiding officer of the Senate, then cast his vote in favor of the resolution, and later it was adopted by the other house of the legislature on a vote of a majority of its members. The twenty senators who had voted against ratification challenging the right of the Lieutenant Governor to cast the deciding vote in the Senate, and alleging that the proposed amendment had lost its vitality because of previous rejection by Kansas and other States and failure of ratification within a reasonable time, sought a writ of mandamus to compel the Secretary of the Senate to erase an endorsement on the resolution, to the effect that it had been adopted by the Senate, and to endorse thereon the words "was not passed," and to restrain the officers of the Senate and House of Representatives from signing the resolution and the Secretary of State of Kansas from authenticating it and delivering it to the Governor. The State entered its appearance and the State Supreme Court entertained the action, sustained the right of the plaintiffs to maintain it, but overruled their contentions, upheld the ratification, and denied the writ. *Held:*

(1) The questions decided were federal questions, arising under Article V of the Constitution. P. 437.

(2) The complaining senators, whose votes against ratification have been overridden and virtually held for naught, although if they are right in their contentions their votes would have been sufficient to defeat ratification, have a plain, direct and adequate interest in maintaining the effectiveness of their votes. They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect and the state court has denied that right and privilege. P. 438.

(3) This Court has jurisdiction to review the decision of the state court by certiorari, under Jud. Code § 237(b). P. 438.

2. The Court being equally divided in opinion as to whether the question presents a justiciable controversy, or is a political question, expresses no opinion upon a contention that the Lieutenant Governor of Kansas was not a part of the "legislature," and under Article V of the Federal Constitution could not be permitted a deciding vote on the ratification of the proposed amendment. P. 446.

3. In accordance with the precedent of the Fourteenth Amendment, the efficacy of ratification of a proposed amendment to the Federal Constitution by a state legislature which had previously rejected the proposal, is *held* a question for the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment. P. 447.

4. The legislature of Kansas having actually ratified the proposed Child Labor Amendment, this Court should not restrain the state officers from certifying the ratification to the Secretary of State, because of an earlier rejection, and thus prevent the question from coming before the political departments. There is found no basis in either Constitution or statute for such judicial action. P. 450.

5. R. S. § 205; 5 U.S.C. 160, presupposes official notice to the Secretary of State when a state legislature has adopted a resolution of ratification. No warrant is seen for judicial interference with the performance of that duty. P. 450.

6. The Congress in controlling the promulgation of the adoption of a constitutional amendment has the final determination of the question whether by lapse of time its proposal of the amendment had lost its vitality before being adopted by the requisite number of legislatures. P. 451.

7. In determining whether a question falls within the category of political, non-justiciable questions, the appropriateness under our system of government of attributing finality to the action of the political departments, and also the lack of satisfactory criteria for a judicial determination, are dominant considerations. P. 455.

146 Kan. 390; 71 P. 2d 518, reversed.

CERTIORARI, 303 U.S. 632, to review a judgment of the Supreme Court of Kansas denying a writ of mandamus, applied for in that court by senators of the State and members of its House of Representatives for the purpose of compelling the Secretary of the Senate to erase an endorsement purporting to show that a resolution for the ratification of a proposal to amend the Federal Constitution had passed the Senate, and to restrain the officers of the Senate and the other house of the legislature from signing the resolution and the Secretary of State of Kansas from authenticating it and delivering it to the Governor.

Messrs. Robert Stone and *Rolla W. Coleman*, on the reargument and on the original argument, for petitioners.

Mr. Clarence V. Beck on the reargument, and with *Mr. E. R. Sloan* on the origial argument, for respondents.

By special leave of Court, *Solicitor General Jackson*, with whom *Mr. Paul A. Freund* was on the brief, argued the case on behalf of the United States, as *amicus curiae*, urging affirmance.

By leave of Court, *Messrs. Orland S. Loomis*, Attorney General of Wisconsin, *Mortimer Levitan* and *Newell S. Boardman*, Assistant Attorneys General, filed a brief on behalf of that State, as *amicus curiae*, urging affirmance.

Opinion of the Court by MR. CHIEF JUSTICE HUGHES, announced by MR. JUSTICE STONE.

In June, 1924, the Congress proposed an amendment to the Constitution, known as the Child Labor Amendment.[1] In January, 1925, the Legislature of Kansas adopted a resolution rejecting the proposed amendment and a certified copy of the resolution was sent to the Secretary of State of the United States. In January, 1937, a resolution known as "Senate Concurrent Resolution No. 3" was introduced in the Senate of Kansas ratifying the proposed amendment. There were forty senators. When the resolution came up for consideration, twenty senators voted in favor of its adoption and twenty voted against it. The Lieutenant Governor, the presiding officer of the Senate, then cast his vote in favor of the resolution. The resolution was later adopted by the House of Representatives on the vote of a majority of its members.

This original proceeding in mandmaus was then brought in the Supreme Court of Kansas by twenty-one members of the Senate, including the twenty senators who had voted against the resolution, and three members of the House of Representatives, to compel the Secretary of the Senate to erase an endorsement on the resolution to the effect that it had been adopted by the Senate and to endorse thereon the words "was not passed," and to restrain the officers of the Senate and House of Representatives from signing the resolution and the Secretary of State of Kansas from authenticating it and delivering it to the Governor. The petition challenged the right of the Lieutenant Governor to cast the

Footnotes at end of article.

deciding vote in the Senate. The petition also set forth the prior rejection of the proposed amendment and alleged that in the period from June, 1924, to March, 1927, the amendment had been rejected by both houses of the legislatures of twenty-six States, and had been ratified in only five States, and that by reason of that rejection and the failure of ratification within a reasonable time the proposed amendment had lost its vitality.

An alternative writ was issued. Later the Senate passed a resolution directing the Attorney General to enter the appearance of the State and to represent the State as its interests might appear. Answers were filed on behalf of the defendants other than the State and plaintiffs made their reply.

The Supreme Court found no dispute as to the facts. The court entertained the action and held that the Lieutenant Governor was authorized to cast the deciding vote, that the proposed amendment retained its original vitality, and that the resolution "having duly passed the house of representatives and the senate, the act of ratification of the proposed amendment by the legislature of Kansas was final and complete." The writ of mandamus was accordingly denied. 146 Kann. 390; 71 P. 2d 518. This Court granted certiorari. 303 U.S. 632.

First. The jurisdiction of this Court.—Our authority to issue the writ of certiorari is challenged upon the ground that petitioners have no standing to seek to have the judgment of the state court reviewed, and hence it is urged that the writ of certiorari should be dismissed. We are unable to accept that view.

The state court held that it had jurisdiction; that "the right of the parties to maintain the action is beyond question."[2] The state court thus determined in substance that members of the legislature had standing to seek, and the court had jurisdiction to grant, mandamus to compel a proper record of legislative action. Had the questions been solely state questions, the matter would have ended there. But the questions raised in the instant case arose under the Federal Constitution and these by the state court. They arose under Article V of the Constitution which alone conferred the power to amend and determined the manner in which that power could be exercised. *Hawke* v. *Smith (No. 1)*, 253 U.S. 221, 227; *Leser* v. *Garnett*, 258 U.S. 130, 137. Whether any or all of the questions thus raised and decided are deemed to be justiciable or political, they are exclusively federal questions and not state questions.

We find the cases cited in support of the contention, that petitioners lack an adequate interest to invoke our jurisdiction to review, to be inapplicable.[3] Here, the plaintiffs include twenty senators, whose votes against ratification have been overridden and virtually held for naught although if they are right in their contentions their votes would have been sufficient to defeat ratification. We think that these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes. Petitioners come directly within the provisions of the statute governing our appellate jurisdiction. They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect and the state court has denied that right and privilege. As the validity of a state statute was not assailed, the remedy by appeal was not available. (Jud. Code, § 237 (a); 28 U.S.C. 344(a)) and the appropriate remedy was by writ of certiorari which we granted. Jud. Code, § 237(b); 28 U.S.C. 344 (b).

The contention to the contrary is answered by our decisions in *Hawke* v. *Smith, supra*, and *Leser* v. *Garnett, supra*. In *Hawke* v. *Smith*, the plaintiff in error, suing as a "citizen and elector of the State of Ohio, and as a taxpayer and elector of the County of Hamilton," on behalf of himself and others similarly situated, filed a petition for an injunction in the state court to restrain the Secretary of State from spending the public money in preparing and printing ballots for submission of a referendum to the electors on the question of the ratification of the Eighteenth Amendment to the Federal Constitution. A demurrer to the petition was sustained in the lower court and its judgment was affirmed by the intermediate appellate court and the Supreme Court of the State. This Court entertained jurisdiction and, holding that the state court had erred in deciding that the State had authority to require the submission of the ratification to a referendum, reversed the judgment.

In *Leser* v. *Garnett*, qualified voters in the State of Maryland brought suit in the state court to have the names of certain women stricken from the list of qualified voters on the ground that the constitution of Maryland limited suffrage to men and that the Nineteenth Amendment to the Federal Consitution has not been validly ratified. The state court took jurisdiction and the Court of Appeals of the State affirmed the judgment dismissing the petition. We granted certiorari. On the question of our jurisdiction we said:

"The petitioners contended, on several grounds, that the Amendment had not become part of the Federal Constitution. The trial court overruled the contentions and dismissed the petition. Its judgment was affirmed by the Court of Appeals of the State, 139 Md. 46; and the case comes here on writ of error. That writ must be dismissed; but the petition for a writ of certiorari, also duly filed, is granted. The laws of Maryland authorized such a suit by a qualified voter against the Board of Registry. Whether the Nineteenth Amendment has become part of the Federal Constitution is the question presented for decision."

And holding that the official notice to the Secretary of State, duly authenticated, of the action of the legislatures of the States, whose alleged ratifications were assailed, was conclusive upon the Secretary of State and that his proclamation accordingly of ratification was conclusive upon the courts, we affirmed the judgment of the state court.

That the question of our jurisdiction in *Leser* v. *Garnett* was decided upon deliberate consideration is sufficiently shown by the fact that there was a motion to dismiss the writ of error for the want of jurisdiction and opposition to the grant of certiorari. The decision is the more striking because on the same day, in an opinion immediately preceding which was prepared for the Court by the same Justice,[4] jurisdiction had been denied to a federal court (the Supreme Court of the District of Columbia) of a suit by citizens of the United States, taxpayers and members of a voluntary association organized to support the Constitution, in which it was sought to have the Nineteenth Amendment declared unconstitutional and to enjoin the Secretary of State from proclaiming its ratification and the Attorney General from taking steps to enforce it. *Fairchild* v. *Hughes*, 258 U.S. 126. The Court held that the plaintiffs' alleged interest in the question submitted was not such as to afford a basis for the proceeding; that the plantiffs had only the right possessed by every citizen "to require that the Government be administered according to law and that the public moneys be not wasted" and that this general right did not entitle a private citizen to bring such a suit as the one in question in the federal courts.[5] It would be difficult to imagine a situation in which the adequacy of the petitioners' interest to invoke our appellate jurisdiction in *Leser* v. *Garnett* could have been more sharply presented.

The effort to distinguish that case on the ground that the plaintiffs were qualified voters in Maryland, and hence could complain of the admission to the registry of those alleged not to be qualified, is futile. The interest of the plaintiffs in *Leser* v. *Garnett* as merely qualified voters at general elections is certainly much less impressive than the interest of the twenty senators in the instant case. This is not a mere intra-parliamentary controversy but the question relates to legislative action deriving its force solely from the provisions of the Federal Constitution, and the twenty senators were not only qualified to vote on the question of ratification but their votes, if the Lieutenant Governor were excluded as not being a part of the legislature for that purpose, would have been decisive in defeating the ratifying resolution.

We are of the opinion that *Hawke* v. *Smith* and *Leser* v. *Garnett* are controlling authorities, but in view of the wide range the discussion has taken we may refer to some other instances in which the question of what constitutes a sufficient interest to enable one to invoke our appellate jurisdiction has been involved. The principle that the applicant must show a legal interest in the controversy has been maintained. It has been applied repeatedly in cases where municipal corporations have challenged state legislation affecting their alleged rights and obligations. Being but creatures of the State, municipal corporations have no standing to invoke the contract clause or the provisions of the Fourteenth Amendment of the Constitution in opposition to the will of their creator.[6] But there has been recognition of the legitimate interest of public officials and administrative commissions, federal and state, to resist the endeavor to prevent the enforcement of statutes in relation to which they have official duties. Under the Urgent Deficiencies Act,[7] the Interstate Commerce Commission, and commissions representing interested States which have intervened, are entitled as "aggrieved parties" to an appeal to this Court from a decree setting aside an order of the Interstate Commerce Commission, though the United States refuses to join in the appeal. *Interstate Commerce Comm'n* v. *Oregon-Washington R. & N. Co.*, 288 U.S. 14. So, this Court may grant certiorari, on the application of the Federal Trade Commission, to review decisions setting aside its orders.[8] *Federal Trade Comm'n* v. *Curtis Publishing Co.*, 260 U.S. 568. Analogous provisions authorize certiorari to review decisions against the National Labor Relations Board.[9] *National Labor Relations Board* v. *Jones & Laughlin Corp.*, 301 U.S. 1. Under § 266 of the Judicial Code (28 U.S.C. 380), where an injunction is sought to restrain the enforcement of a statute of a State or an order of its administrative board or commission, upon the ground of invalidity under the Federal Constitution, the right of direct appeal to this Court from the decree of the required three judges is accorded whether the injunction be granted or denied. Hence, in case the injunction is granted, the state board is entitled to appeal. See, for example, *South Carolina Highway Dept.* v. *Barnwell Brothers*, 303 U.S. 177.

The question of our authority to grant certiorari, on the application of state officers, to review decisions of state courts declaring state statutes, which these officers seek to enforce, to be repugnant to the Federal Constitution, has been carefully considered and our jurisdiction in that class of cases has been sustained. The original Judiciary Act of 1789 provided in § 25[10] for the review by this Court of a judgment of a state court "where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity"; that is, where the claim of federal right had been *denied*.

Footnotes at end of article.

By the Act December 23, 1914,[11] it was provided that this Court may review on certiorari decisions of state courts *sustaining* a federal right. The present statute governing our jurisdiction on certiorari contains the corresponding provision that this Court may exercise that jurisdiction "as well where the federal claim is sustained as where it is denied." Jud. Code, § 237 (b); 28 U.S.C. 344 (b). The plain purpose was to provide an opportunity, deemed to be important and appropriate, for the review of the decisions of state courts on constitutional questions however the state court might decide them. Accordingly where the claim of a complainant that a state officer be restrained from enforcing a state statute because of constitutional invalidity is sustained by the state court, the statute enables the state officer to seek a reversal by this Court of that decision.

In *Blodgett* v. *Silberman*, 277 U.S. 1, 7, the Court granted certiorari on the application of the State Tax Commissioner of Connecticut who sought review of the decision of the Supreme Court of Errors of the State so far as it denied the right created by its statute to tax the transfer of certain securities, which had been placed for safekeeping in New York, on the ground that they were not within the taxing jurisdiction of Connecticut. Entertaining jurisdiction, this Court reversed the judgment in that respect. *Id.*, p. 18.

The question received most careful consideration in the case of *Boynton* v. *Hutchinson Gas Co.*, 291 U.S. 656, where the Supreme Court of Kansas had held a state statute to be repugnant to the Federal Constitution, and the Attorney General of the State applied for certiorari. His application was opposed upon the ground that he had merely an official interest in the controversy and the decisions were invoked upon which the Government relies in challenging our jurisdiction in the instant case.[12] Because of its importance, and contrary to our usual practice, the Court directed oral argument on the question whether certiorari should be granted, and after that argument, upon mature deliberation, granted the writ. The writ was subsequently dismissed but only because of a failure of the record to show service of summons and severance upon the appellees in the state court who were not parties to the proceedings here. 292 U.S. 601. This decision with respect to the scope of our jurisdiction has been followed in later cases. In *Morehead* v. *New York ex rel. Tipaldo*, 298 U.S. 587, we granted certiorari on an application by the warden of a city prison to review the decision of the Court of Appeals of the State on *habeas corpus*, ruling that the minimum wage law of the State violated the Federal Constitution. This Court decided the case on the merits. In *Kelly* v. *Washington ex rel, Foss Co.*, 302 U.S. 1, we granted certiorari, on the application of the state authorities charged with the enforcement of the state law relating to the inspection and regulation of vessels, to review the decision of the state court holding the statute invalid in its application to navigable waters. We concluded that the state act had a permissible field of operation and the decision of the state court in holding the statute completely unenforceable in deference to federal law was reversed.

This class of cases in which we have exercised our appellate jurisdiction on the application of state officers may be said to recognize that they have an adequate interest in the controversy by reason of their duty to enforce the state statutes the validity of which has been drawn in question. In none of these cases could it be said that the state officers invoking our jurisdiction were sustaining any "private damage."

Footnotes at end of article.

While one who asserts the mere right of a citizen and taxpayer of the United States to complain of the alleged invalid outlay of public moneys has no standing to invoke the jurisdiction of the federal courts (*Frothingham* v. *Mellon*, 262 U.S. 447, 480, 486, 487), the Court has sustained the more immediate and substantial right of a resident taxpayer to invoke the interposition of a court of equity to enjoin an illegal use of moneys by a municipal corporation. *Crampton* v. *Zabriskie*, 101 U.S. 601, 609; *Frothingham* v. *Mellon*, *supra*. In *Helm* v. *McCall*, 239 U.S. 175, we took jurisdiction on a writ of error sued out by a property owner and taxpayer, who had been given standing in the state court, for the purpose of reviewing its decision sustaining the validity under the Federal Constitution, of a state statute as applied to contracts for the construction of public works in the City of New York, the enforcement of which was alleged to involve irreparable loss to the city and hence to be inimical to the interests of the taxpayer.

In *Smiley* v. *Holm*, 285 U.S. 355, we granted certiorari on the application of one who was an "elector," as well as a "citizen" and "taxpayer," and who assailed under the Federal Constitution a state statute establishing congressional districts. Passing upon the merits we held that the functions of a state legislature in prescribing the time, place and manner of holding elections for representatives in Congress under Article I, § 4, was a law-making function in which the veto power of the state governor participates, if under the state constitution the governor has that power in the course of the making of state laws, and accordingly reversed the judgment of the state court. We took jurisdiction on certiorari in a similar case from New York where the petitioners were "citizens and voters of the State" who had sought a mandamus to compel the Secretary of State of New York to certify that representatives in Congress were to be elected in the congressional districts as defined by a concurrent resolution of the Senate and Assembly of the legislature. There the state court, construing the provision of the Federal Constitution as contemplating the exercise of the lawmaking power, had sustained the defense that the concurrent resolution was ineffective as it had not been submitted to the Governor for approval, and refused the writ of mandamus. We affirmed the judgment. *Koenig* v. *Flynn*, 285 U.S. 375.

In the light of this course of decisions, we find no departure from principle in recognizing in the instant case that at least the twenty senators whose votes, if their contention were sustained, would have been sufficient to defeat the resolution ratifying the proposed constitutional amendment, have an interest in the controversy which, treated by the state court as a basis for entertaining and deciding the federal questions, is sufficient to give the Court jurisdiction to review that decision.

Second. The participation of the Lieutenant Governor.—Petitioners contend that, in the light of the powers and duties of the Lieutenant Governor and his relation to the Senate under the state constitution, as construed by the supreme court of the state, the Lieutenant Governor was not a part of the "legislature" so that under Article V of the Federal Constitution, he could be permitted to have a deciding vote on the ratification of the proposed amendment, when the senate was equally divided.

Whether this contention presents a justiciable controversy, or a question which is political in its nature and hence not justiciable, is a question upon which the Court is equally divided and therefore the Court expresses no opinion upon that point.

Third. The effect of the previous rejection of the amendment and of the lapse of time since its submission.

1. The state court adopted the view expressed by text-writers that a state legislature which has rejected an amendment proposed by the Congress may later ratify.[13] The argument in support of that view is that Article V says nothing of rejection but speaks only of ratification and provides that a proposed amendment shall be valid as part of the Constitution when ratified by three-fourths of the States; that the power to ratify is thus conferred upon the State by the Constitution and, as a ratifying power, persists despite a previous rejection. The opposing view proceeds on an assumption that if ratification by "Conventions" were prescribed by the Congress, a convention could not reject and, having adjourned *sine die*, be reassembled and ratify. It is also premised, in accordance with views expressed by text-writers,[14] that ratification if once given cannot afterwards be rescinded and the amendment rejected, and it is urged that the same effect in the exhaustion of the State's power to act should be ascribed to rejection; that a State can act "but once, either by convention or through its legislature."

Historic instances are cited. In 1865, the Thirteenth Amendment was rejected by the legislature of New Jersey which subsequently ratified it, but the question did not become important as ratification by the requisite number of States had already been proclaimed.[15] The question did arise in connection with the adoption of the Fourteenth Amendment. The legislatures of Georgia, North Carolina and South Carolina had rejected the amendment in November and December, 1866.[16] New governments were erected in those States (and in others) under the direction of Congress.[17] The new legislatures ratified the amendment, that of North Carolina on July 4, 1868, that of South Carolina on July 9, 1868, and that of Georgia on July 21, 1868.[18] Ohio and New Jersey first ratified and then passed resolutions withdrawing their consent.[19] As there were then thirty-seven States, twenty-eight were needed to constitute the requisite three-fourths. On July 9, 1868, the Congress adopted a resolution requesting the Secretary of State to communicate "a list of the States of the Union whose legislatures have ratified the fourteenth article of amendment," [20] and in Secretary Seward's report attention was called to the action of Ohio and New Jersey.[21] On July 20th Secretary Seward issued a proclamation reciting the ratification by twenty-eight States, including North Carolina, South Carolina, Ohio and New Jersey, and stating that it appeared that Ohio and New Jersey had since passed resolutions withdrawing their consent and that "it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid and therefore ineffectual. The Secretary certified that if the ratifying resolutions of Ohio and New Jersey were still in full force and effect, notwithstanding the attempted withdrawal, the amendment had become a part of the Constitution.[22] On the following day the Congress adopted a concurrent resolution which, reciting that three-fourths of the States having ratified (the list including North Carolina, South Carolina, Ohio and New Jersey),[23] declared the Fourteenth Amendment to be a part of the Constitution and that it should be duly promulgated as such by the Secretary of State. Accordingly, Secretary Seward, on July 28th, issued his proclamation embracing the States mentioned in the congressional resolution and adding Georgia.[24]

Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification.[25] While there were special circumstances, because of the action of the Congress in relation to the governments of the rejecting States (North Carolina, South Carolina and Georgia), these circumstances were not recited in proclaiming ratification and

the previous action taken in these States was set forth in the proclamation as actual previous rejections by the respective legislatures. This decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted.

We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment.

The precise question as now raised is whether, when the legislature of the State, as we have found, has actually ratified the proposed amendment, the Court should restrain the state officers from certifying the ratification to the Secretary of State, because of an earlier rejection, and thus prevent the question from coming before the political departments. We find no basis in either Constitution or statute for such judicial action. Article V, speaking solely of ratification, contains no provision as to rejection.[26] Nor has the Congress enacted a statute relating to rejections. The statutory provision with respect to constitutional amendments is as follows:

"Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States." [27]

The statute presupposes official notice to the Secretary of State when a state legislature has adopted a resolution of ratification. We see no warrant for judicial interference with the performance of that duty. See *Leser* v. *Garnett, supra,* p. 137.

2. The more serious question is whether the proposal by the Congress of the amendment had lost its vitality through lapse of time and hence it could not be ratified by the Kansas legislature in 1937. The argument of petitioners stresses the fact that nearly thirteen years elapsed between the proposal in 1924 and the ratification in question. It is said that when the amendment was proposed there was a definitely adverse popular sentiment and that at the end of 1925 there had been rejection by both houses of the legislatures of sixteen States and ratification by only four States, and that it was not until about 1933 that an aggressive campaign was started in favor of the amendment. In reply, it is urged that Congress did not fix a limit of time for ratification and that an unreasonably long time had not elapsed since the submission; that the conditions which gave rise to the amendment had not been eliminated; that the prevalence of child labor, the diversity of state laws and the disparity in their administration, with the resulting competitive inequalities, continued to exist. Reference is also made to the fact that a number of the States have treated the amendment as still pending and that in the proceedings of the national government there have been indications of the view.[28] It is said that there were fourteen ratifications in 1933, four in 1935, one in 1936, and three in 1937.

We have held that the Congress in proposing an amendment may fix a reasonable time for ratification. *Dillon* v. *Gloss,* 256 U.S. 368. There we sustained the action of the Congress in providing in the proposed Eighteenth Amendment that it should be inoperative unless ratified within seven years.[29] No limitation of time for ratification is provided in the instant case either in the proposed amendment or in the resolution of submission. But petitioners contend that, in the absence of a limitation by the Congress, the Court can and should decide what is a reasonable period within which ratification may be had. We are unable to agree with that contention.

It is true that in *Dillon* v. *Gloss* the Court said that nothing was found in Article V which suggested that an amendment once proposed was to be open to ratification for all time, or that ratification in some States might be separated from that in others by many years and yet be effective; that there was a strong suggestion to the contrary in that proposal and ratification were but succeeding steps in a single endeavor; that as amendments were deemed to be prompted by necessity, they should be considered and disposed of presently; and that there is a fair implication that ratification must be sufficiently contemporaneous in the required number of States to reflect the will of the people in all sections at relatively the same period; and hence that ratification must be within some reasonable time after the proposal. These considerations were cogent reasons for the decision in *Dillon* v. *Gloss* that the Congress had the power to fix a reasonable time for ratification. But it does not follow that, whenever Congress has not exercised that power, the Court should take upon itself the responsibility of deciding what constitutes a reasonable time and determine accordingly the validity of ratifications. That question was not involved in *Dillon* v. *Gloss* and, in accordance with familiar principle, what was there said must be read in the light of the point decided.

Where are to be found the criteria for such a judicial determination? None are to be found in Constituttion or statute. In their endeavor to answer this question petitioners' counsel have suggested that at least two years should be allowed; that six years would not seem to be unreasonably long; that seven years had been used by the Congress as a reasonable period; that one year, six months and thirteen days was the average time used in passing upon amendments which have been ratified since the first ten amendments; that three years, six months and twenty-five days has been the longest time used in ratifying. To this list of variables, counsel add that "the nature and extent of publicity and the activity of the public and of the legislatures of the several States in relation to any particular proposal should be taken into consideration." That statement is pertinent, but there are additional matters to be examined and weighed. When a proposed amendment springs from a conception of economic needs, it would be necessary, in determining whether a reasonable time had elapsed since its submission, to consider the economic conditions prevailing in the country, whether these had so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it or whether conditions were such as to intensify the feeling of need and the appropriateness of the proposed remedial action. In short, the question of a reasonable time in many cases would involve, as in this case it does involve, an appraisal of a great variety of relevant conditions, political, social and economic, which can hardly be said to be within the appropriate range of evidence receivable in a court of justice and as to which it would be an extravagant extension of judicial authority to assert judicial notice as the basis of deciding a controversy with respect to the validity of an amendment actually ratified. On the other hand, these conditions are appropriate for the consideration of the political departments of the Government. The questions they involve are essentially political and not justiciable. They can be decided by the Congress with the full knowledge and appreciation ascribed to the national legislature of the political, social and economic conditions which have prevailed during the period since the submission of the amendment.

Our decision that the Congress has the power under Article V to fix a reasonable limit of time for ratification in proposing an amendment proceeds upon the assumption that the question, what is a reasonable time, lies within the congressional province. If it be deemed that such a question is an open one when the limit has not been fixed in advance, we think that it should also be regarded as an open one for the consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment. The decision by the Congress, in its control of the action of the Secretary of State, of the question whether the amendment had been adopted within a reasonable time would not be subjected to review by the courts.

It would unduly lengthen this opinion to attempt to review our decisions as to the class of questions deemed to be political and not justiciable. In determining whether a question falls within that category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations.[30] There are many illustrations in the field of our conduct of foreign relations, where there are "considerations of policy, considerations of extreme magnitude, and certainly, entirely incompetent to the examination and decision of a court of justice." *Ware* v. *Hylton,* 3 Dall. 199, 260.[31] Questions involving similar considerations are found in the government of our internal affairs. Thus, under Article IV, § 4, of the Constitution, providing that the United States "shall guarantee to every State in this Union a Republican Form of Government," we have held that it rests with the Congress to decide what government is the established one in a State and whether or not it is republican in form. *Luther* v. *Borden,* 7 How. 1, 42. In that case Chief Justice Taney observed that "when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal." So, it was held in the same case that under the provision of the same Article for the protection of each of the States "against domestic violence" it rested with the Congress "to determine upon the means proper to be adopted to fulfil this guarantee." *Id.,* p. 43. So, in *Pacific Telephone Co.* v. *Oregon,* 223 U.S. 118, we considered that questions arising under the guaranty of a republican form of government had long since been "definitely determined to be political and governmental" and hence that the question whether the government of Oregon had ceased to be republican in form because of a constitutional amendment by which the people reserved to themselves power to propose and enact laws independently of the legislative assembly and also to approve or reject any act of that body, was a question for the determination of the Congress. It would be finally settled when the Congress admitted the senators and representatives of the State.

For the reasons we have stated, which we think to be as compelling as those which underlay the cited decisions, we think that the Congress in controlling the promulgation of the adoption of a constitutional amend-

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ment has the final determination of the question whether by lapse of time its proposal of the amendment had lost its vitality prior to the required ratifications. The state officials should not be restrained from certifying to the Secretary of State the adoption by the legislature of Kansas of the resolution of ratification.

As we find no reason for disturbing the decision of the Supreme Court of Kansas in denying the mandamus sought by petitioners, its judgment is affirmed but upon the grounds stated in this opinion.

Affirmed.

Concurring opinion by MR. JUSTICE BLACK, in which MR. JUSTICE ROBERTS, MR. JUSTICE FRANKFURTER and MR. JUSTICE DOUGLAS join.

Although, for reasons to be stated by MR. JUSTICE FRANKFURTER, we believe this cause should be dismissed, the ruling of the Court just announced removes from the case the question of petitioners' standing to sue. Under the compulsion of that ruling,[32] MR. JUSTICE ROBERTS, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS and I have participated in the discussion of other questions considered by the Court and we concur in the result reached, but for somewhat different reasons.

The Constitution grants Congress exclusive power to control submission of constitutional amendments. Final determination by Congress that ratification by three-fourths of the States has taken place "is conclusive upon the courts."[33] In the exercise of that power, Congress, of course, is governered by the Constitution. However, whether submission, intervening procedure or Congressional determination of ratification conforms to the commands of the Constitution, calls for decisions by a "political department" of questions of a type which this Court has frequently designated "political." And decision of a "political question" by the "political department" to which the Constitution has committed it "conclusively binds the judges, as well as all other officers, citizens and subjects of . . . government."[34] Proclamation under authority of Congress that an amendment has been ratified will carry with it a solemn assurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation.[35] To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree.

The state court below assumed jurisdiction to determine whether the proper procedure is being followed between submission and final adoption. However, it is apparent that judicial review of or pronouncements upon a supposed limitation of a "reasonable time" within which Congress may accept ratification; as to whether duly authorized state officials have proceeded propertly in ratifying or voting for ratification; or whether a State may reverse its action once taken upon a proposed amendment; and kindred questions, are all consistent only with an ultimate control over the amending process in the courts. And this must inevitably embarrass the course of amendment by subjecting to judicial interference matters that we believe were intrusted by the Constitution solely to the political branch of government.

The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived at in *Dillon* v. *Gloss*,[36] that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within a "reasonable time." Nor does the Court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article V of the Constitution. On the other hand, the Court's opinion declares that Congress has the exclusive power to decide the "political questions" of whether a State whose legislature has once acted upon a proposed amendment may subsequently reverse its position, and whether, in the circumstances of such a case as this, an amendment is dead because an "unreasonable" time has elapsed. No such division between the political and judicial branches of the government is made by Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the Article exclusively and completely to Congress. The process itself is "political" in its entirely, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point.

Since Congress has sole and complete control over the amending process, subject to no judicial review, the views of any court upon this process cannot be binding upon Congress, and insofar as *Dillon* v. *Gloss* attempts judicially to impose a limitation upon the right of Congress to determine final adoption of an amendment, it should be disapproved. If Congressional determination that an amendment has been completed and become a part of the Constitution is final and removed from examination by the courts, as the Court's present opinion recognizes, surely the steps leading to that condition must be subject to the scrutiny, control and appraisal of none save the Congress, the body having exclusive power to make that final determination.

Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon that exclusive power by this Court or by the Kansas courts. Neither state nor federal courts can review that power. Therefore, any judicial expression amounting to more than mere acknowledgment of exclusive Congressional power over the political process of amendment is a mere admonition to the Congress in the nature of an advisory opinion, given wholly without constitutional authority.

Opinion of MR. JUSTICE FRANKFURTER.

It is the view of MR. JUSTICE ROBERTS, MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS and myself that the petitioners have no standing in this Court.

In endowing this Court with "judicial Power" the Constitution presupposed an historic content for that phrase and relied on assumption by the judiciary of authority only over issues which are appropriate for disposition by judges. The Constitution further explicitly indicated the limited area within which judicial action was to move—however far-reaching the consequences of action within that area—by extending "judicial Power" only to "Cases" and "Controversies." Both by what they said and by what they implied, the framers of the Judiciary Article gave merely the outlines of what were to them the familiar operations of the English judicial system and its manifestations on this side of the ocean before the Union. Judicial power could come into play only in matters that were the traditional concern of the courts at Westminster and only if they arose in ways that to the expert feel of lawyers constituted "Cases" or "Controversies." It was not for courts to meddle with matters that required no subtlety to be identified as political issues.[37] And even as to the kinds of questions which were the staple of judicial business, it was not for courts to pass upon them as abstract, intellectual problems but only if a concrete, living contest between adversaries called for the arbitrament of law. Compare *Muskrat* v. *United States*, 219 U.S. 346; *Tutun* v. *United States*, 270 U.S. 568; *Willing* v. *Chicago Auditorium Assn.*, 277 U.S. 274; *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U.S. 249.

As abstractions, these generalities represent common ground among judges. Since, however, considerations governing the exercise of judicial power are not mechanical criteria but derive from conceptions regarding the distribution of governmental powers in their manifold, changing guises, differences in the application of canons of jurisdiction have arisen from the beginning of the Court's history.[38] Conscious or unconscious leanings toward the serviceability of the judicial process in the adjustment of public controversies clothed in the form of private litigation inevitably affect decisions. For they influence awareness in recognizing the relevance of conceded doctrines of judicial self-limitation and rigor in enforcing them.

Of all this, the present controversy furnishes abundant illustration. Twenty-one members of the Kansas Senate and three members of its House of Representatives brought an original mandamus proceeding in the Supreme Court of that State to compel the Secretary of its Senate to erase an endorsement on Kansas "Senate Concurrent Resolution No. 3" of January 1937, to the effect that it had been passed by the Senate, and instead to endorse thereon the words "not passed." They also sought to restrain the officers of both Senate and House from authenticating and delivering it to the Governor of the State for transmission to the Secretary of State of the United States. These Kansas legislators resorted to their Supreme Court claiming that there was no longer an amendment open for ratification by Kansas and that, in any event, it had not been ratified by the "legislature" of Kansas, the constitutional organ for such ratification. See Article V of the Constitution of the United States. The Kansas Supreme Court held that the Kansas legislators had a right to its judgment on these claims, but on the merits decided against them and denied a writ of mandamus. Urging that such denial was in derogation of their rights under the Federal Constitution, the legislators, having been granted *certiorari* to review the Kansas judgment, 303 U.S. 632, ask this Court to reverse it.

Our power to do so is explicitly challenged by the United States as *amicus curiae*, but would in any event have to be faced. See *Mansfield C. & L. M. Ry. Co.* v. *Swan*, 111 U.S. 379, 382. To whom and for what causes the courts of Kansas are open are matters for Kansas to determine.[39] But Kansas can not define the contours of the authority of the federal courts, and more particularly of this Court. It is our ultimate responsibility to determine who may invoke our judgment and under what circumstances. Are these members of the Kansas legislature, therefore, entitled to ask us to adjudicate the grievances of which they complain?

It is not our function, and it is beyond our power, to write legal essays or to give legal opinions, however solemnly requested and however great the national emergency. See the correspondence between Secretary of State Jefferson and Chief Justice Jay, 3 Johnson, Correspondence and Public Papers of John Jay, 486–89. Unlike the role allowed to judges in a few state courts and to the Supreme Court of Canada, our exclusive business is litigation.[40] The requisites of litigation are not satisfied when questions of constitutionality though conveyed through the outward forms of a conventional court proceeding do not bear special relation to a particular litigant. The scope and consequences of our doctrine of judicial review over executive and legislative action should make us observe fastidiously the bounds of

Footnotes at end of article.

the litigious process within which we are confined.[41] No matter how seriously infringement of the Constitution may be called into question, this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate, apart from a political concern which belongs to all. *Stearns* v. *Wood*, 236 U.S. 75; *Fairchild* v. *Hughes*, 258 U.S. 126.

In the familiar language of jurisdiction, these Kansas legislators must have standing in this Court. What is their distinctive claim to be here, not possessed by every Kansan? What is it that they complain of, which could not be complained of here by all their fellow citizens? The answer requires analysis of the grievances which they urge.

They say that it was beyond the power of the Kansas legislature, no matter who voted or how, to ratify the Child Labor Amendment because for Kansas there was no Child Labor Amendment to ratify. Assuming that an amendment proposed by the Congress dies of inanition after what is to be deemed a "reasonable" time, they claim that, having been submitted in 1924, the proposed Child Labor Amendment was no longer alive in 1937. Or, if alive, it was no longer so for Kansas because, by a prior resolution of rejection in 1925, Kansas had exhausted her power. In no respect, however, do these objections relate to any secular interest that pertains to these Kansas legislators apart from interests that belong to the entire commonalty of Kansas. The fact that these legislators are part of the ratifying mechanism while the ordinary citizen of Kansas is not, is wholly irrelevant to this issue. On this aspect of the case the problem would be exactly the same if all but one legislator had voted for ratification.

Indeed the claim that the Amendment was dead or that it was no longer open to Kansas to ratify, is not only not an interest which belongs uniquely to these Kansas legislators; it is not even an interest special to Kansas. For it is the common concern of every citizen of the United States whether the Amendment is still alive, or whether Kansas could be included among the necessary "three-fourths of the several States."

These legislators have no more standing on these claims of unconstitutionality to attack "Senate Concurrent Resolution No. 3" than they would have standing here to attack some Kansas statute claimed by them to offend the Commerce Clause. By as much right could a member of the Congress who had voted against the passage of a bill because moved by constitutional scruples urge before this Court our duty to consider his arguments of unconstitutionality.

Clearly a Kansan legislator would have no standing had be brought suit in a federal court. Can the Kansas Supreme Court transmute the general interest in these constitutional claims into the individualized legal interest indispensable here? No doubt the bounds of such legal interest have a penumbra which gives some freedom in judging fulfilment of our jurisdictional requirements. The doctrines affecting standing to sue in the federal courts will not be treated as mechanical yardsticks in assessing state court ascertainments of legal interest brought here for review. For the creation of a vast domain of legal interests is in the keeping of the states, and from time to time state courts and legislators give legal protection to new individual interests. Thus, while the ordinary state taxpayer's suit is not recognized in the federal courts, it affords adequate standing for review of state decisions when so recognized by state courts. *Coyle* v. *Smith*, 221 U. S. 559; *Heim* v. *McCall*, 239 U. S. 175.

But it by no means follows that a state court ruling on the adequacy of legal interest is binding here. Thus, in *Tyler* v. *Judges*, 179 U.S. 405, the notion was rejected that merely because the Supreme Judicial Court of Massachusetts found an interest of sufficient legal significance for assailing a statute, this Court must consider such claim. Again, this Court has consistently held that the interest of a state official in vindicating the Constitution of the United States gives him no legal standing here to attack the constitutionality of a state statute in order to avoid compliance with it. *Smith* v. *Indiana*, 191 U.S. 138; *Braxton County Court* v. *West Virginia*, 208 U.S. 192; *Marshall* v. *Dye*, 231 U.S. 250; *Stewart* v. *Kansas City*, 239 U.S. 14. Nor can recognition by a state court of such an undifferentiated, general interest confer jurisdiction on us. *Columbus & Greenville Ry. Co.* v. *Miller*, 283 U.S. 96, reversing *Miller* v. *Columbus & Greenville Ry.*, 154 Miss. 317; 122 So. 366. Contrariwise, of course, an official has a legally recognized duty to enforce a statute which he is charged with enforcing. And so, an official who is obstructed in the performance of his duty under a state statute because his state court found a violation of the United States Constitution may, since the Act of December 23, 1914, 38 Stat. 790, ask this Court to remove the fetters against enforcement of his duty imposed by the state court because of an asserted misconception of the Constitution. Such a situation is represented by *Blodgett* v. *Silberman*, 277 U.S. 1, and satisfied the requirement of legal interest in *Boynton* v. *Hutcheson*, 291 U.S. 656, *certiorari* dismissed on another ground in 292 U.S. 601.[42]

We can only adjudicate an issue as to which there is a claimant before us who has a special, individualized stake in it. One who is merely the self-constituted spokesman of a constitutional point of view can not ask us to pass on it. The Kansas legislators could not bring suit explicitly on behalf of the people of the United States to determine whether Kansas could still vote for the Child Labor Amendment. They cannot gain standing here by having brought such a suit in their own names. Therefore, none of the petitioners can here raise questions concerning the power of the Kansas legislature to ratify the Amendment.

This disposes of the standing of the three members of the lower house who seek to invoke the jurisdiction of this Court. They have no standing here. Equally without litigious standing is the member of the Kansas Senate who voted for "Senate Concurrent Resolution No. 3." He cannot claim that his vote was denied any parliamentary efficacy to which it was entitled. There remains for consideration only the claim of the twenty nay-voting senators that the Lieutenant-Governor of Kansas, the presiding officer of its Senate, had, under the Kansas Constitution, no power to break the tie in the senatorial vote on the Amendment, thereby depriving their votes of the effect of creating such a tie. Whether this is the tribunal before which such a question can be raised by these senators must be determined even before considering whether the issue which they pose is justiciable. For the latter involves questions affecting the distribution of constitutional power which should be postponed to preliminary questions of legal standing to sue.

The right of the Kansas senators to be here is rested on recognition by *Leser* v. *Garnett*, 258 U.S. 130, of a voter's right to protect his franchise. The historic source of this doctrine and the reasons for it were explained in *Nixon* v. *Herndon*, 273 U.S. 536, 540. That was an action for $5,000 damages against the Judges of Elections for refusing to permit the plaintiff to vote at a primary election in Texas. In disposing of the objection that the plaintiff had no cause of action because the subject matter of the suit was political, Mr. Justice Holmes thus spoke for the Court: "Of course the petition concerns political action but it alleges and seeks to recover for private damage. That private damage may be caused by such political action and may be recovered for in a suit at law hardly has been doubted for over two hundred years, since *Ashby* v. *White*, 2 Ld. Raym. 938, 3 *id.* 320, and has been recognized by this Court." "Private damage" is the clue to the famous ruling in *Ashby* v. *White*, *supra*, and determines its scope as well as that of cases in this Court of which it is the justification. The judgment of Lord Holt is permeated with the conception that a voter's franchise is a personal right, assessable in money damages, of which the exact amount "is peculiarly appropriate for the determination of a jury," see *Wiley* v. *Sinkler*, 179 U.S. 58, 65, and for which there is no remedy outside the law courts. "Although this matter relates to the parliament," said Lord Holt, "yet it is an injury precedaneous to the parliament, as my Lord Hale said in the case of *Bernardiston* v. *Soame*, 2 Lev. 114, 116. The parliament cannot judge of this injury, nor give damage to the plaintiff for it: they cannot make him a recompense." 2 Ld. Raym. 938, 958.

The reasoning of *Ashby* v. *White* and the practice which has followed it leave intra-parliamentary controveries to parliaments and outside the scrutiny of law courts. The procedures for voting in legislative assemblies—who are members, how and when they should vote, what is the requisite number of votes for different phases of legislative activity, what votes were cast and how they were counted—surely are matters that not merely concern political action but are of the very essence of political action, if "political" has any connotation at all. *Field* v. *Clark*, 143 U.S. 649, 670, *et seq.*; *Leser* v. *Garnett*, 258 U.S. 130, 137. In no sense are they matters of "private damage." They pertain to legislators not as individuals but as political representatives executing the legislative process. To open the law courts to such controversies is to have courts sit in judgment on the manifold disputes engendered by procedures for voting in legislative assemblies. If the doctrine of *Ashby* v. *White* vindicating the private rights of a voting citizen has not been doubted for over two hundred years, it is equally significant that for over two hundred years *Ashby* v. *White* has not been sought to be put to purposes like the present. In seeking redress here these Kansas senators have wholly misconceived the functions of this Court. The writ of *certiorari* to the Kansas Supreme Court should therefore be dismissed.

Mr. JUSTICE BUTLER, dissenting.

The Child Labor Amendment was proposed in 1924; more than 13 years elapsed before the Kansas legislature voted, as the decision just announced holds, to ratify it. Petitioners insist that more than a reasonable time had elapsed and that, therefore, the action of the state legislature is without force. But this Court now holds that the question is not justiciable, relegates it to the "consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States the time arrives for the promulgation of the adoption of the amendment" and declares that the decision by Congress would not be subject to review by the courts.

In *Dillon* v. *Gloss*, 256 U.S. 368, one imprisoned for transportation of intoxicating liquor in violation of § 3 of the National Prohibition Act, instituted habeas corpus proceedings to obtain his release on the ground that the Eighteenth Amendment was invalid because the resolution proposing it declared that it should not be operative unless ratified within seven years. The Amendment was ratified in less than a year and a half. We definitely held that Article V impliedly requires amendments submitted to be ratified within a reasonable time after proposal; that Congress may fix a reasonable time for ratification, and that the period of seven years fixed by the Congress was reasonable.

We said:

Footnotes at end of article.

"It will be seen that this article says nothing about the time within which ratification may be had—neither that it shall be unlimited nor that it shall be fixed by Congress. What, then, is the reasonable inference or implication? Is it that ratification may be had at any time, as within a few years, a century or even a longer period; or that it must be had within some reasonable period which Congress is left free to define?

"We do not find anything in the Article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson [in his Constitutional Conventions, 4th ed. § 585] 'that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.' That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810, and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal.

"Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. . . . Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified."

Upon the reasoning of our opinion in that case, I would hold that more than a reasonable time had elapsed [43] and that the judgment of the Kansas supreme court should be reversed.

The point that the question—whether more than a reasonable time had elapsed—is not justiciable but one for Congress after attempted ratification by the requisite number of States, was not raised by the parties or by the United States appearing as *amicus curiae;* it was not suggested by us when ordering reargument. As the Court, in the *Dillon* case, did directly decide upon the reasonableness of the seven years fixed by the Congress, it ought not now, without hearing argument upon the point, hold itself to lack power to decide whether more than 13 years between proposal by Congress and attempted ratification by Kansas is reasonable.

Mr. JUSTICE MCREYNOLDS joins in this opinion.

CHANDLER, GOVERNOR OF KENTUCKY, ET AL. AGAINST WISE ET AL.

CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

(No. 14. Argued October 10, 11, 1938. Reargued April 18, 1939.—Decided June 5, 1939)

Suit was brought in a state court to restrain the Governor and other state officials from sending to the Secretary of State of the United States a certified copy of a resolution enacted by the state legislature purporting to ratify the proposed Child Labor Amendment to the Federal Constitution, it being alleged that such attempted ratification was illegal and void. *Held:*

That although the state court had jurisdiction *in limine*, the act of the Governor in forwarding the certification to the federal Secretary of State after the beginning of the suit and after a restraining order and summons had been issued, but before actual service and without knowledge of the pendency of the proceeding, had left no controversy susceptible of judicial determination; and that a writ of certiorari from this Court to review the final judgment should therefore be dismissed.

271 Ky. 252; 111 S.W. 2d 633, dismissed.

CERTIORARI, 303 U.S. 634, to review the affirmance by the court below of a judgment entered pursuant to its opinion on an earlier review, 270 Ky. 1. The suit was brought by individuals—citizens, taxpayers, and voters in Kentucky—to restrain the Governor and officers of the General Assembly from sending to the Secretary of State of the United States a certified copy of a resolution of the legislature purporting to ratify the proposed Child Labor Amendment, and for a judgment declaring the legislative Act to be illegal and void because of a rejection of the same proposed amendment by an earlier legislature of the State, as well as by more than a majority of the legislatures of the several States, and further because more than a reasonable time for ratification had elapsed since the amendment was first proposed.

Mr. J. W. Jones, Assistant Attorney General of Kentucky, on the reargument and on the original argument, for petitioners.

Mr. Lafon Allen on the original argument, and with *Mr. Oldham Clarke* on the reargument, for respondents.

By special leave of Court, *Solicitor General Jackson* with whom *Mr. Paul A. Freund* was on the brief, argued the case on behalf of the United States, as *amicus curiae,* urging reversal.

By leave of Court, *Messrs. Orland S. Loomis,* Attorney General of Wisconsin, *Mortimer Levitan* and *Newell S. Boardman,* Assistant Attorneys General, filed a brief on behalf of that State, as *amicus curiae,* urging reversal.

Opinion of the Court by MR. CHIEF JUSTICE HUGHES, announced by MR. JUSTICE STONE.

In January, 1937, the legislature of Kentucky adopted a resolution purporting to ratify the constitutional amendment proposed by the Congress in 1924 and known as the "Child Labor Amendment." [1]

Respondents, citizens, taxpayers and voters in Kentucky, brought this suit in the state court to restrain the Governor of the Commonwealth and the officers of the General Assembly from sending certified copies of the resolution to the Secretary of State of the United States and the presiding officers of the Senate and House of Representatives, and for a judgment declaring the action of the General Assembly to be illegal and void. The complaint stated that in 1926 the proposed amendment had been rejected by the General Assembly of the Commonwealth and also by more than a majority of the legislatures of the States, and that the General Assembly could not thereafter legally reconsider and adopt the amendment; and, further, that its action was not taken within a reasonable time after the amendment was proposed.

Upon the filing of the petition, a restraining order was granted and summons was issued. On the same day, but before the Governor was actually served with a copy of the restraining order or summons, he forwarded by mail a certified copy of the resolution to the Secretary of State. It is not claimed that the Governor then knew of the pendency of the proceeding.

Plaintiffs then filed an amended petition setting forth the action taken by the Governor and sought a mandatory injunction to require him to notify the Secretary of State of the pendency of the suit and that the notice which he had sent was void and should be disregarded. That action was not taken. Defendants filed a general demurrer which was sustained in the Circuit Court but its judgment was reversed by the Court of Appeals. 270 Ky. 1; 108 S. W. 2d 1024.

The court gave opportunity on the remand to the Circuit Court, with directions to overrule the demurrer, for such further proceedings as were not inconsistent with its views. Upon that remand the defendants declined to plead further and judgment was entered in accordance with the opinion of the Court of Appeals. The judgment so entered set forth (1) that an actual controversy existed between the parties, that the plaintiffs had the right to maintain the suit and the court had jurisdiction; (2) that the resolution of the legislature purporting to ratify the proposed amendment was void, not having been ratified according to the provisions of the Constitution of the United States; (3) that the notice given by the Governor to the Secretary of State was of no effect; (4) that the clerk of the court should give official notice to the Department of State that the resolution purporting to ratify the amendment was invalid, that it had not been ratified according to the provisions of the Constitution of the United States, and that the notice given by the Governor was of no effect. The clerk was further directed to send a duly authenticated copy of the judgment to the Secretary of State by registered mail.

On appeal, that judgment was affirmed by the Court of Appeals. We granted certiorari. 303 U.S. 634.

We think that, while the state court had jurisdiction *in limine,* the writ of certiorari should be dismissed upon the ground that after the Governor of Kentucky had forwarded the certification of the ratification of the amendment to the Secretary of State of the United States there was no longer a controversy susceptible of judicial determination.

Dismissed.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE BUTLER think that the judgment of the Court of Appeals of Kentucky should be affirmed on the authority of *Dillon* v. *Gloss,* 256 U.S. 368, and for the reasons stated in the dissenting opinion in *Coleman* v. *Miller, ante,* p. 470.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring:

For the reasons stated in concurring opinion in *Coleman v. Miller, ante,* p. 456, we do not believe that state or federal courts have any jurisdiction to interfere with the amending process.

We therefore concur in the dismissal.

Footnotes at end of article.

FOOTNOTES

[1] The text of the proposed amendment is as follows (43 Stat. 670):

"Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"Sec. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

[2] The state court said on this point:

"At the threshold we are confronted with the question raised by the defendants as to the right of the plaintiffs to maintain this action. It appears that on March 30, 1937, the state senate adopted a resolution directing the attorney general to appear for the state of Kansas in this action. It further appears that on April 3, 1937, on application of the attorney general, an order was entered making the state of Kansas a party defendant. The state being a party to the proceedings, we think the right of the parties to maintain the action is beyond question. (G.S. 1935, 75–702; *State, ex rel.* v. *Public Service Comn.*, 135 Kan. 491, 11 P. 2d 999.)"

[3] See *Caffrey* v. *Oklahoma Territory*, 177 U.S. 346; *Smith* v. *Indiana*, 191 U.S. 138; *Braxton County Court* v. *West Virginia*, 208 U.S. 192; *Marshall* v. *Dye*, 231 U.S. 250; *Stewart* v. *Kansas City*, 239 U.S. 14; *Columbus & Greenville Ry. Co.* v. *Miller*, 283 U.S. 96.

[4] Mr. Justice Brandeis.

[5] *Id.*, pp. 129, 130. See, also, *Frothingham* v. *Mellon*, 262 U.S. 447, 480, 486, 487.

[6] *Pouhuska* v. *Pauhuska Oil Co.*, 250 U.S. 394; *Trenton* v. *New Jersey*, 262 U.S. 182; *Risty* v. *Chicago, R. I. & P. Ry. Co.*, 270 U.S. 378; *William* v. *Mayor*, 289 U.S. 36.

[7] Act of October 22, 1913, 38 Stat. 219; 28 U.S.C. 47, 47a, 345.

[8] 15 U.S.C. 45; 28 U.S.C. 348.

[9] 29 U.S.C. 160(e). See, also, as to orders of Federal Communications Commission, 47 U.S.C. 402(e).

[10] 1 Stat. 73, 85, 86.

[11] 38 Stat. 790; see, also, Act of September 6, 1916, 30 Stat. 726.

[12] See cases cited in Note 3.

[13] Jameson on Constitutional Conventions, §§ 576–581; Willoughby on the Constitution, § 329a.

[14] Jameson, *op. cit.*, §§ 582–584; Willoughby, *op. cit.*, § 329a; Ames, "Proposed Amendments to the Constitution," House Doc. No. 353, Pt. 2, 54th Cong., 2d Sess., pp. 299, 300.

[15] 13 Stat. 774, 775; Jameson, *op cit.*, § 576; Ames, *op cit.*, p. 300.

[16] 15 Stat. 710.

[17] Act of March 2, 1867, 14 Stat., p. 428. See *White* v. *Hart*, 13 Wall. 646, 652.

[18] 15 Stat. 710.

[19] 15 Stat. 707.

[20] Cong. Globe, 40th Cong., 2d Sess., p. 3857.

[21] Cong. Globe, 40th Cong., 2d Sess., p. 4070.

[22] 15 Stat. 706, 707.

[23] 15 Stat. 709, 710.

[24] 15 Stat. 710, 711; Ames, *op cit.*, App. No. 1140, p. 377.

[25] The legislature of New York which had ratified the fifteenth Amendment in 1869 attempted, in January, 1870, to withdraw its ratification, and while this fact was stated in the proclamation by Secretary Fish of the ratification of the amendment, and New York was not needed to make up the required three-fourths, that State was included in the list of ratifying States. 16 Stat. 1131; Ames *op cit.*, App. No. 1284, p. 388.

[26] Compare Article VII.

[27] 5 U.S.C. 160. From Act of April 20, 1818, § 2; 3 Stat. 439; R.S. § 205.

[28] Sen. Rep. 726, 75th Cong., 1st Sess.; Sen. Rep. 788, 75th Cong., 1st Sess.: Letter of the President on January 8, 1937, to the Governors of nineteen non-ratifying States whose legislatures were to meet in that year, urging them to press for ratification. New York Times, January 9, 1937, p. 5.

[29] 40 Stat. 1050. A similar provision was inserted in the Twenty-first Amendment. *United States* v. *Chambers*, 291 U.S. 217, 222.

[30] See Willoughby, *op, cit.*, pp. 1326, *et seq.*; Oliver P. Field, "The Doctrine of Political Questions in the Federal Courts," 8 Minnesota Law Review, 485; Melville Fuller Weston, "Political Questions," 38 Harvard Law Review, 296.

[31] See, also, *United States* v. *Palmer*, 3 Wheat. 610, 634; *Foster* v. *Neilson*, 2 Pet. 253, 309; *Doe v. Braden*, 16 How. 635, 657; *Terlinden v. Ames*, 184 U.S. 270, 288.

[32] Cf, *Helvering* v. *Davis*, 301 U.S. 619, 639–40.

[33] *Leser* v. *Garnett*, 258 U.S. 130, 137.

[34] *Jones* v. *United States*, 137 U.S. 202, 212; *Foster* v. *Neilson*, 2 Pet. 253, 309, 314; *Luther* v. *Borden*, 7 How. 1, 42; *In re Cooper*, 143 U.S. 472, 503; *Pacific States Telephone Co.* v. *Oregon*, 223 U.S. 118; *Davis* v. *Ohio*, 241 U.S. 565, 569. "And in this view, it is not material to inquire, nor is it the province of the court to determine, whether the executive ["political department"] be right or wrong. It is enough to know that in the exercise of his constitutional functions, he had decided the question. Having done this, under the responsibilities which belong to him, it is obligatory on the people and government of the Union. . . . this court have laid down the rule, that the action of the political branches of the government in a matter that belongs to them, is conclusive." *Williams* v. *Suffolk Ins. Co.*, 13 Pet. 415, 420.

[35] *Field* v. *Clark*, 143 U.S. 649, 672.

[36] 256 U.S. 368, 375.

[37] For an early instance of the abstention of the King's Justices from matters political, see the Duke of York's Claim to the Crown, House of Lords, 1460, 5 Rot. Parl. 375, reprinted in Wambaugh, Cases on Constitutional Law, 1.

[38] See *e.g.* the opinion of Mr. Justice Iredell in *Chisholm* v. *Georgia*, 2 Dall. 419, 429; concurring opinion of Mr. Justice Johnson in *Fletcher* v. *Peck*, 6 Cranch 87, 143; and the cases collected in the concurring opinion of Mr. Justice Brandeis in *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 341.

[39] This is subject to some narrow exceptions not here relevant. See *e.g.*, *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U.S. 230.

[40] As to advisory opinions in use in a few of the state courts, see J. B. Thayer, Advisory Opinions, reprinted in Legal Essays by J. B. Thayer, at 42 *et. seq.*; article on "Advisory Opinions," 1 Enc. Soc. Sci. 475. As to advisory opinions in Canada, see *Attorney-General for Ontario* v. *Attorney-General for Canada* [1912] A. C. 571. Speaking of the Canadian system, Lord Chancellor Haldane, in *Attorney General for British Columbia* v. *Attorney General for Canada* [1914] A. C. 153, 162, said: "It is at times attended with inconveniences, and it is not surprising that the Supreme Court of the United States should have steadily refused to adopt a similar procedure, and should have confined itself to adjudication on the legal rights of litigants in actual controversies." For further animadversions on advisory pronouncements by judges, see Lord Chancellor Sankey in *In re The Regulation and Control of Aeronautics in Canada* [1932] A. C. 54, 66: "We sympathize with the view expressed at length by Newcombe, J., which was concurred in by the Chief Justice, [of Canada] as to the difficulty which the Court must experience in endeavoring to answer questions put to it in this way."

Australia followed our Constitutional practice in restricting her courts to litigious business. The experience of English history which lay behind it was thus put in the Australian Constitutional Convention by Mr. (later Mr. Justice) Higgins: "I feel strongly that it is most inexpedient to break in on the established practice of the English law, and secure decisions on facts which have not arisen yet. Of course, it is a matter that lawyers have experience of every day, that a judge does not give the same attention, he can not give that same attention, to a suppositious case as when he feels the pressure of the consequences to a litigant before him. . . . But here is an attempt to allow this High Court, before cases have arisen, to make a pronouncement upon the law that will be binding. I think the imagination of judges, like that of other persons, is limited, and they are not able to put before their minds all the complex circumstances which may arise and which they ought to have in their minds when giving a decision. If there is one thing more than another which is recognized in British jurisprudence it is that a judge never gives a decision until the facts necessary for that decision have arisen." Rep. Nat. Austral. Conv. Deb. (1897) 966–67.

[41] See the series of cases beginning with *Hayburn's Case*, 2 Dall. 409, through *United States* v. *West Virginia*, 295 U.S. 463.

[42] A quick summary of the jurisdiction of this Court over state court decisions leaves no room for doubt that the fact that the present case is here on *certiorari* is wholly irrelevant to our assumption of jurisdiction. Section 25 of the First Judiciary Act gave reviewing power to this Court only over state court decisions *denying* a claim of federal right. This restriction was, of course, born of fear of disobedience by the state judiciaries of national authority. The Act of September 6, 1916, 39 Stat. 726, withdrew from this obligatory jurisdiction cases where the state decision was against a "title, right, privilege, or immunity" claimed to exist under the Constitution laws, treaties or authorities of the United States. This change, which was inspired mainly by a desire to eliminate from review as of right cases arising under the Federal Employers' Liability Act, left such review only in cases where the validity of a treaty, statute or authority of the United States was drawn into question and the decision was against the validity, and in cases where the validity of a statute of a state or a state authority was drawn into question on the grounds of conflict with federal law and the decision was in favor of its validity. The Act of February 13, 1925, 43 Stat. 936, 937, extended this process of restricting our obligatory jurisdiction by transferring to review by *certiorari* cases in which the state court had held invalid an "authority" claimed to be exercised under the laws of the United States or in which it had upheld, against claims of invalidity on federal grounds, an "authority" exercised under the laws of the states. Neither the terms of these two restrictions nor the controlling comments in committee report or by members of this Court who had a special share in promoting the Acts of 1916 and 1925, give any support for believing that by contracting the range of obligatory jurisdiction over state adjudications Congress enlarged the jurisdiction of the Court by removing the established requirement of legal interest as a threshold condition to being here.

Nor does the Act of December 23, 1914, 38 Stat. 790, touch the present problem. By that Act, Congress for the first time gave this Court power to review state court decisions *sustaining* a federal right. For this purpose it made *certiorari* available. The Committee reports and the debates on this Act prove that its purpose was merely to remove the unilateral quality of Supreme Court review of state court decisions on constitutional questions as to which this Court has the ultimate say. The Act did not create a new legal interest as a basis of review here; it built on the settled doctrine that an official has a legally recognizable duty to carry out a statute which he is supposed to enforce.

Thus, prior to the Act of 1914, the Kentucky case, *post*, p. 474, could not have come here at all, and prior to 1916, the Kansas case would have come here, if at all, by writ of error. By allowing cases from state courts which previously could not have come here at all to come here on *certiorari* the Act of

1914 merely lifted the previous bar—that a federal claim had been sustained—but left every other requisite of jurisdiction unchanged. Similarly, no change in these requisites was affected by the Acts of 1916 and 1925 in confining certain categories of litigation from the state courts to our discretionary instead of obligatory reviewing power.

[43] Chronology of Child Labor Amendment:

[A State is said to have "rejected" when both Houses of its legislature passed resolutions of rejection, and to have "refused to ratify" when both Houses defeated resolution for ratification.]

June 2, 1924, Joint Resolution deposited in State Department. In that year, Arkansas ratified; North Carolina rejected. *Ratification, 1; rejection, 1.*

1925, Arizona, California and Wisconsin ratified; Florida, Georgia, Indiana, Kansas, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Vermont rejected; Connecticut, Delaware and South Dakota refused to ratify. *Ratifications, 4; rejections, 16; refusals to ratify, 3.*

1926, Kentucky and Virginia rejected. *Ratifications, 4; rejections, 18; refusals to ratify, 3.*

1927, Montana ratified; Maryland rejected. *Ratifications, 5; rejections, 19; refusals to ratify, 3.*

1931, Colorado ratified. *Ratifications, 6; rejections, 19; refusals to ratify, 3.*

1933, Illinois, Iowa, Michigan, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Washington and West Virginia ratified as did also Maine, Minnesota, New Hampshire, and Pennsylvania, which had rejected in 1925. *Ratifications, 20; rejections, (eliminating States subsequently ratifying) 15; refusals to ratify, 3.*

1935, Idaho and Wyoming ratified, as did Utah and Indiana, which had rejected in 1925. As in 1925, Connecticut refused to ratify. *Ratifications, 24; rejections, 13; refusals to ratify, 3.*

1936, Kentucky, which had rejected in 1926, ratified. *Ratifications, 25; rejections, 12; refusals to ratify, 3.*

1937, Nevada and New Mexico ratified, as did Kansas, which had rejected in 1925. Massachusetts, which had rejected in 1925, refused to ratify. *Ratifications, 28; rejections, 11; refusals to ratify, 3.*

Six States are not included in this list: Alabama, Louisiana, Mississippi, Nebraska, New York, and Rhode Island. It appears that there has never been a vote in Alabama or Rhode Island. Louisiana house of representatives has three times (1923, 1934 and 1936) defeated resolutions for ratification. In Mississippi, the Senate adopted resolution for ratification in 1934, but in 1936 another Senate resolution for ratification was adversely reported. In Nebraska, the House defeated ratification resolutions in 1927 and 1935, but the Senate passed such a resolution in 1929. In New York, ratification was defeated in the House in 1935 and 1937, and in the latter year, the Senate passed such a resolution.

[44] 43 Stat. 670.

Mr. BAYH. Mr. President, I do not intend to spend a great deal of time discussing the eloquent presentation of my friend, the Senator from North Carolina.

What I am about to say appears earlier in the RECORD. But for the sake of our colleagues who may read this RECORD prior to the vote, I would like to say that as one Senator, and as floor manager of this particular constitutional amendment, it is the judgment of the Senator from Indiana that it does not subject women to the draft or to service in the Armed Forces unless the Congress of the United States requires them to serve.

There is nothing in the present Constitution, absent this amendment, that denies Congress the right to say that we have a national emergency or some contingency which we do not presently have—and hope and pray to God we never do have—that requires women in this country to serve in the military in the manner that men have traditionally served.

A number of women are now serving in an efficient manner in the armed services. This amendment would not prohibit them from having that opportunity.

It would provide for the unlimited voluntary service of women. That is important because some feel that women are discriminated against insofar as their ability to volunteer. However, House Joint Resolution 264, if it is embodied in the Constitution, would not automatically require women to be subject to the draft in the opinion of the Senator from Indiana.

What we are proposing—and I think we need to recognize this—is that if we accept a significant amendment such as this, we are greatly increasing the probability that this measure would have to go to a conference committee.

There are those who predict dire circumstances if the amendment ever gets into a conference committee. So, those who feel that this is merely a perfecting amendment need to be put on notice that those who have been working in this area for a long period of time see this as as the death knell for House Joint Resolution 264.

Let me try to put the fears of the Senator from North Carolina that women might be drafted—and I can understand that concern—at rest by suggesting that in the judgment of the Senator from Indiana, the floor manager of House Joint Resolution 264, the amendment does not—and let me emphasize that—does not and will not subject the women of this country to a draft unless Congress by statute declares that a national emergency exists and that the Nation needs their services.

That is the law today. It will not be changed one iota by the passage of House Joint Resolution 264.

Mr. ERVIN. Mr. President, the Senator from Indiana has just emphasized the danger in this resolution. Its own proponents disagree about what it means.

The document that I mentioned as having been printed in the RECORD at the instance of the able and distinguished Congresswoman from Michigan (Mrs. GRIFFITHS), on May 25, 1970, was prepared by a group supporting this proposal. This paper was presented to the council by its study group on equal legal rights: Sarah Jane Cunningham, chairman, Virginia R. Allan, Lorraine L. Blair, Rachel E. Scott, Irene Wischer; Mary Eastwood, technical staff.

They stated several times in very emphatic language that this amendment would require that women be drafted for military service if men were drafted for military service and that any law which drafted men but did not draft women for military service would be unconstitutional under this provision.

This illustrates why an amendment, whose own advocates do not know what it means—and which no one else knows what it means—should not be either submitted or ratified.

Mr. BAYH. Mr. President, I think the Senator from North Carolina should tell us who these women are, what sort of credentials they have and who they represent.

We are now making legislative history. The Senator from Indiana, as the floor manager of the measure, said that women would not be drafted. What credentials does the Senator from North Carolina rely on?

Mr. CURTIS. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. CURTIS. Mr. President, did the Senator read the name of Sarah Jane Cunningham?

Mr. ERVIN. I did.

Mr. CURTIS. Mr. President, I do not know what Miss Cunningham thinks about this amendment. I have not discussed it with her. However, I want the RECORD to show that she is a distinguished practicing lawyer of the State of Nebraska. Her name has been prominently mentioned for judgeships. She is a past president of the International Business and Professional Women of the country.

She is a very distinguished individual. She is active in the practice of law. She tries many cases and is well respected by the courts. Her father served with distinction in the House of Representatives, although as a Representative from the State of Iowa, for many years.

I am not at liberty to say anything about the position Miss Cunningham takes on this measure, because I have not discussed it with her. Nor have I received any communication from her with respect to it.

Mr. ERVIN. Mr. President, the Senator from Nebraska agrees with the Senator from North Carolina that this distinguished woman lawyer can be safely relied upon to give a correct interpretation of the proposed amendment even if she happens to be diametrically opposed to the views of the distinguished Senator from Indiana.

Mr. CURTIS. I agree with that statement. However, I do not know from my own knowledge what her position is.

I want also to make this clear, that the junior Senator from Nebraska would distinguish between the use of any lawyer's name in connection with an organization and a personalized speech that they might attach their names to. That is the reason I did not want to take a position for Miss Cunningham either way on this matter, but merely wanted to have the RECORD show that she is a person of unusual distinction.

Mr. ERVIN. Mr. President, the point I want to make is that if a distinguished lawyer like Miss Cunningham and a distinguished lawyer like the Senator from Indiana do not agree on what the amendment means, it indicates a lot of confusion that ought to be resolved so that the American people would know what is being proposed by the disagreeing proponents.

UNANIMOUS-CONSENT REQUEST

Mr. BYRD of West Virginia. Mr. President, I ask the able Senator from North

Carolina whether he would be agreeable to a vote on his amendment this afternoon at a specific time.

Mr. ERVIN. Mr. President, I would prefer to have the vote in the morning because there are only nine Senators present in the Chamber. That means that 91 Senators are somewhere else. And those 91 Senators who are somewhere else could read the newspaper in the morning and find that the Senator from North Carolina had proposed an amendment that would exempt women from compulsory military service. I think that they would then be better able to vote with intelligence on my amendment than they would tonight. They are not here to find out what the amendment is calculated to do.

Mr. BYRD of West Virginia. Mr. President, would the distinguished Senator from North Carolina care to propound a unanimous-consent request with respect to a time tomorrow morning when the Senate might vote?

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senate vote on my amendment immediately after the conclusion of the morning hour tomorrow.

Mr. BYRD of West Virginia. Does the Senator have reference to the morning hour or morning business, the morning hour being the expiration of the first 2 hours?

Mr. ERVIN. I would say to the distinguished Senator from West Virginia I would accept any suggestion he might have that would clarify that point. I would amend my unanimous-consent request to have the Senate vote on this amendment tomorrow at whatever time the Senator from West Virginia might suggest.

Mr. BYRD of West Virginia. Mr. President, in view of what the able Senator from North Carolina has just said, I will propound the following unanimous-consent request.

Under the previous order, the Senate tomorrow at the conclusion of routine morning business will proceed again to the consideration of the unfinished business, House Joint Resolution 264.

I ask unanimous consent that beginning tomorrow at the time the unfinished business is laid before the Senate under the previous order, there be a period of controlled debate on the amendment of the Senator from North Carolina, the time to be equally divided between the able Senator from North Carolina (Mr. ERVIN) and the able Senator from Indiana (Mr. BAYH), the manager of the resolution, the time to be limited to 30 minutes, equally divided, and that at the close of the 30 minutes a vote occur on the amendment of the Senator from North Carolina.

Mr. BAYH. Mr. President, reserving the right to object, this is a most interesting colloquy we have had here. In other words, the Senate has been denied the opportunity to vote on this measure this evening. Two or three of us have tried to get a unanimous-consent agreement to vote at 5 o'clock. We have been denied that because one Member wants to make sure that everybody has a chance to read in the newspapers what he says. If we do this on every amendment we will be here until the snow flies.

Mr. President, I object. I want to make it clear I have no objection to voting tomorrow. But we have some 74 Members of the Senate here right now. They were here on a vote earlier this afternoon. I respectfully suggest to the Senator from North Carolina that we vote now, up and down, and then proceed to the Senator's other thought-provoking amendments. Maybe we can vote on more of them tomorrow, and get them voted on without reading in the newspapers what the Senator has said.

Mr. ERVIN. My vision is 20/20, and, to save my life, I can see only 10 Senators here.

Mr. BYRD of West Virginia. Mr. President, the Senator from Indiana is correct. Earlier today 74 Senators voted on the amendment offered on Friday last by the able Senator from Alabama (Mr. ALLEN). That vote occurred at 1 o'clock. I have no doubt that a quorum is now within earshot. Therefore, I ask unanimous consent that the Senate proceed to the consideration of the pending amendment offered by the Senator from North Carolina (Mr. ERVIN), that there be a quorum call, and that at the close of the quorum call there be 10 minutes equally divided between the able Senator from North Carolina (Mr. ERVIN) and the able Senator from Indiana (Mr. BAYH), and that at the expiration of the 10 minutes the Senate proceed to vote on the amendment of the Senator from North Carolina.

Mr. ERVIN. Mr. President, if the Senator would modify that request to say "in the morning" I would agree to it, so that Senators would have a chance to read in the newspapers what is said about the amendment; not what I say, but the substance of the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. I object. I have to.

The PRESIDING OFFICER. Objection is heard.

Mr. BAYH. Mr. President, I admire the tenacity of our colleague and leader, the Senator from West Virginia. Could the Senator ask his friend from North Carolina to indulge him by answering one question? Suppose we would propose the following unanimous-consent request.

I ask unanimous consent that at the hour of 4 o'clock a live quorum be called and that immediately upon the Senate being advised that a quorum is present to do business, that a half hour be allotted for further discussion of this amendment of the Senator from North Carolina, to be equally divided between the Senator from North Carolina and the Senator from Indiana, and that thereafter we have a yea-and-nay vote. I make this request with all respect to my friend, the Senator from North Carolina. I feel that he is anxious to explain the issues and see that all Members of the Senate be informed. I am positive that he can do this much more eloquently in person with a quorum present than would be the case if Senators have to rely on what is reported in the newspapers in the morning, with all due respect to the illustrious members of the press.

Mr. ERVIN. I object because I want Senators to have the opportunity to read it in the newspapers. I do not want them to come here not knowing what the amendment would do. I am willing that they come in tomorrow and vote up or down on the amendment.

Mr. BAYH. The Senator from Indiana is not going to take the time of the Senate further to try to convince the Senate that we should move forward more vigorously than we have. I thank the Senator from West Virginia for his tenacity in pursuing this matter.

I make one last remark. I am well aware of the talents of Miss Cunningham, a distinguished lady lawyer from Nebraska. I am glad our colleague has pointed out who she is. I thought it might be interesting for the Senator from North Carolina to tell the Senate who they were, since he seemed to be relying on their expertise explicitly.

As a former judge of his State, and an outstanding judge, I think he knows that it is not difficult to get two lawyers on different sides of a given issue. Some people feel the present amendment would subject women to the draft; an equal number, if not more, feel it would not.

However, in the case of ambiguity, we all know that the courts look at the legislative history. It is for the sake of that history that the Senator from Indiana persists in pointing out, as the floor manager of the bill, that this amendment would compel women to serve in the service just because men are being drafted. If Congress by law suggests there is a national emergency so that we are compelled to use women, it would have the right to do so. But House Joint Resolution 264, in the judgment of the Senator from Indiana, would not prohibit Congress from continuing to suggest, that the best interests of the Nation require men but not women to be drafted.

ORDER OF BUSINESS

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

Mr. BAYH. I yield to the Senator from Connecticut.

S. 4459—ORIGINAL BILL REPORTED, TO ESTABLISH AN INDEPENDENT CONSUMER PROTECTION AGENCY—(S. REPT. NO. 91-1331)—REFERRAL OF BILL TO COMMITTEE ON COMMERCE

Mr. RIBICOFF. Mr. President, from the Committee on Government Operations, I report an original bill (S. 4459) The Consumer Protection Organization Act of 1970, with a report. I ask unanimous consent that the bill be referred to the Committee on Commerce and reported back to the Senate no later than November 23, 1970, and that it then be placed on the calendar without further action by the Senate or by the committee.

This has been cleared by the committee.

The PRESIDING OFFICER (Mr. DOLE). Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, 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.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations which will be presented to the Senate by the able Senator from Maryland (Mr. TYDINGS), and I ask unanimous consent for their immediate consideration.

The PRESIDING OFFICER. There is a unanimous-consent request pending by the Senator from Connecticut.

Mr. BYRD of West Virginia. Mr. President, the Senator from Connecticut will withdraw his request temporarily.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia that the Senator from Connecticut withdraw his request temporarily? The Chair hears none, and it is so ordered.

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Mr. TYDINGS. Mr. President, I ask that the Senate consider the 15 nominations to the District of Columbia Court of General Sessions, which were reported earlier today.

The PRESIDING OFFICER. The nominations will be stated.

The legislative clerk proceeded to read the nominations to the District of Columbia Court of General Sessions.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

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

The nominations are as follows:

DeWitt S. Hyde, of Maryland, to be an associate judge of the District of Columbia Court of General Sessions for the term of years prescribed by Public Law 91–358, approved July 29, 1970.

Dyer Justice Taylor, of Virginia, to be an associate judge, District of Columbia Court of General Sessions, for the term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970, vice Justin L. Edgerton, deceased.

Normalie Holloway Johnson, of the District of Columbia, to be an associate judge, District of Columbia Court of General Sessions, for the term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970, vice Morris Miller, deceased.

Leonard Braman, of Maryland, to be an associate judge, District of Columbia Court of General Sessions, for the term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970, vice Milton S. Kronheim, term expired.

Paul F. McArdle, of Maryland, to be an associate judge of the District of Columbia court of general sessions for the term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970, vice Thomas C. Scalley, term expired.

Sylvia A. Bacon, of the District of Columbia, to be an associate judge, District of Columbia court of general sesisons, for the term 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

John F. Doyle, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

Eugene N. Hamilton, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

Stanley S. Harris, of Maryland, to be an associate judge, District of Columbia court of of general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

Theodore R. Newman, Jr., of the District of Columbia, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

Nicholas S. Nunzio, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

John G. Penn, of Maryland, to be an associate judge, District of Columbia court general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

George H. Revercomb, of Virginia, to be associate judge, District of Columbia court of general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

William E. Stewart, Jr., of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years, a new position created by Public Law 91–358, approved July 29, 1970.

James A. Washington, Jr., of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of years prescribed by Public Law 91–358, approved July 29, 1970, a new position created by said Public Law 91–358.

Mr. TYDINGS. Mr. President, the 15 nominations before the Senate are for the trial judges of the District of Columbia court of general sessions which will become the new superior court, the trial court for the District of Columbia.

The nominations were submitted to the Senate of the United States by the President some 19 days ago. They were processed immediately by the District of Columbia Committee. A hearing was held this morning in which all nominees appeared, including three nominees for the District of Columbia Court of Appeals. Testimony was taken both in support of and in opposition to the candidates for the trial court and the appeals court for the District of Columbia.

The 15 nominations which are now before the Senate of the United States include only the nominations for the trial court. Four of the fifteen are to fill prior vacancies caused by death or the expiration of a term of office. One nomination is a reappointment. The remainder are new judgeships created by the District of Columbia Court Reform and Criminal Procedure Act of 1970.

The District of Columbia Committee met in executive session after the hearing this morning and unanimously reported favorably the 15 nominations for the trial court. The District of Columbia Committee also voted unanimously to take under further consideration the nominations for the three appeals court positions, pending the receipt and evaluation of information which the committee solicited from the appellate court nominees and from the American Bar Association.

I may point out that the present District of Columbia Court of Appeals has six appellate judges, and the additional jurisdiction conferred by the Court Reform Act will not be transferred to the appeals court until February, so there is no particular time pressure involved with respect to pending appeals court nominations as exists in the trial court by virtue of its staggering case backlog.

The District of Columbia is concerned with the urgent problem of having adequate courtroom space ready so the new judges will be able to go to work at once. In the hearing this morning before the District of Columbia Committee, all the members of our committee, including myself, were concerned by the fact that court facilities are not immediately ready for the new judges. We made that point to the Deputy Attorney General of the United States, Mr. Kleindienst and we met this afternoon with the chief judge of the court of general sessions, Judge Greene, in order to expedite the preparation of these facilities.

Once the Senate acts this afternoon, the District of Columbia Committee will have completed its work on the trial court nominees. However, I enjoin the Department of Justice and the Attorney General of the United States that they must move forward to get the courtroom facilities, desks, chairs, space, not to mention the supplemental appropriations to pay the new judges and supporting personnel, if we are going to have an effective court reform law.

I have assurances from the Deputy Attorney General that they will take these needs into consideration. I make the point here on the floor of the Senate that it is not enough just to enact court reorganization legislation and confirm the new judges. We need leadership from the Executive to make certain that there are places for them to hold court, that there are desks and equipment, that there are the basic tools for them to work with and that there are sufficient funds for personnel, if we are to clear up the backlog in the docket and if we are to achieve the objective of the court reform legislation.

I have taken up the matter of moving the confirmation of these nominations with the deputy minority leader (Mr. GRIFFIN). I understand it is acceptable to him that we waive the normal 1-day waiting period and get the confirmation of the nominations completed today.

Mr. GRIFFIN. Mr. President, if the Senator will yield briefly, I am very pleased that the Senator from Maryland and his committee moved so rapidly on these nominations. Unless there is an objection from any other Seantor, I join him in urging that the nomination be confirmed.

The PRESIDING OFFICER. The question is on the confirmation of the nominations, en bloc.

Mr. STENNIS. Mr. President, reserving the right to object, are these U.S. district judges?

Mr. TYDINGS. No. These are judges for what will become the new superior court for the District of Columbia, pres-

ently the court of general sessions. The new court is created under the District of Columbia Court Reform and Criminal Procedure Act of 1970.

Mr. STENNIS. I thank the Senator. I have no objection.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nominations, en bloc?

Without objection, the nominations are confirmed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, the President will be so notified.

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

EQUAL RIGHTS FOR MEN AND WOMEN

The Senate resumed the consideration of the joint resolution (H.J. Res. 264) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Mr. RIBICOFF obtained the floor.

Mr. ERVIN. Mr. President, I wonder if the Senator will yield to me so that I may ask for the yeas and nays on my amendment.

Mr. RIBICOFF. I yield.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

REFERRAL OF BILL

Mr. RIBICOFF. Mr. President, from the Committee on Government Operations I report the Consumer Protection Act of 1970, with a report, and I ask unanimous consent that the bill be referred to the Committee on Commerce, that it be reported back to the Senate no later than November 23, 1970, and that it then be placed on the calendar without further action by the Senate or by the committee.

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

RESOLUTION HONORING SENATOR JOHN L. McCLELLAN FOR HIS UNTIRING EFFORTS AND SUPPORT ON BEHALF OF THE FEDERAL DONABLE SURPLUS PROPERTY PROGRAM

Mr. RIBICOFF. Mr. President, my distinguished colleague, the senior Senator from Arkansas, JOHN L. MCCLELLAN, has recently been commended by the National Association of State Agencies for Surplus Property. This organization, by resolution unanimously adopted in executive session on July 27, 1970, expressed its deep appreciation for Senator MCCLELLAN's cooperation, devotion, and able assistance on behalf of the donable surplus property program.

I am personally familiar with Senator MCCLELLAN's enthusiastic support of this program. During my tenure as Secretary of Health, Education, and Welfare, I had the opportunity to closely observe the operation of the donable surplus property program and to become particularly aware of the tremendous assistance which accrue to its many beneficiaries.

Senator MCCLELLAN has been a vibrant force in the success of this program, which has substantially improved the quality of many educational and health facilities throughout this Nation by the transfer of Federal surplus property to public schools, colleges, and health and other nonprofit educational institutions. Since the enactment of the Federal Property Administrative Service Act of 1949, more than $7.3 billion worth of real and personal property has been made available to these institutions, benefiting millions of Americans.

Mr. President, this tribute to Senator MCCLELLAN is another of many he has received for his untiring and unstinting devotion to the public interest over the years.

Mr. President, I join in commending my colleague for his work in this area and ask unanimous consent that the resolution honoring Senator MCCLELLAN be printed in the RECORD.

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

RESOLUTION

Whereas, Honorable John L. McClellan, a distinguished member of the United States Senate from the State of Arkansas, has demonstrated his interest in and support of the Donable Surplus Property Program; and

Whereas, Senator John L. McClellan, Chairman, Senate Committee on Government Operations, has worked diligently through the years in support of legislation to improve the Donable Surplus Property Program;

Therefore be it resolved, that the members of the National Association of State Agencies for Surplus Property by copy of this resolution to Senator McClellan express their sincere appreciation and thanks for his untiring support of the Donable Program.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from Nebraska (Mr. CURTIS) be recognized for the submission of a resolution and ask unanimous consent for the immediate consideration of that resolution.

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

ADOPTION OF A RESOLUTION DEALING WITH PRISONERS OF WAR

Mr. CURTIS. Mr. President, I send a resolution to the desk and ask that it be read.

The PRESIDING OFFICER. The resolution will be read.

The legislative clerk read the resolution by title, as follows:

To express the sense of the Senate with respect to certain ceremonies designed to express publicly the concern of the people of the United States for individuals missing in action in Southeast Asia or being held captive as prisoners of war by the Government of North Vietnam and its allies.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

Mr. CURTIS. Mr. President, I ask unanimous consent that the resolution in its entirety be printed in the RECORD at this point.

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

S. RES. 475

Resolution to express the sense of the Senate with respect to certain ceremonies designed to express publicly the concern of the people of the United States for individuals missing in action in Southeast Asia or being held captive as prisoners of war by the Government of North Vietnam and its allies

Resolved, That it is the sense of the Senate that during the half-time activities in the football game between the United States Military Academy and the United States Naval Academy on November 28, 1970, there should be appropriate ceremonies and activities designed (1) to express publicly the concern of the people of the United States for those members of the Armed Forces of the United States who are missing in action in Southeast Asia and for such members and other persons who are held captive as prisoners of war by the Government of North Vietnam and its allies; and (2) to appeal to men of good will throughout the world to join the people of the United States in seeking the identification of those individuals held as prisoners of war, in calling upon the Government of North Vietnam and its allies to accord such individuals treatment that is fair, humane, and in accordance with the Geneva Conventions of 1920 and 1949, and in praying for the early release of such individuals.

SEC. 2. The Secretary of the Senate is directed to transmit copies of this resolution to the Secretaries of the Army, the Navy, and the Air Force.

Mr. CURTIS. Mr. President, I offer this resolution in behalf of myself and 37 cosponsors. The distinguished majority leader (Mr. MANSFIELD) is a cosponsor, as is the distinguished minority leader (Mr. SCOTT).

This resolution would call upon the armed services to have special ceremonies between halves of the Army-Navy football game this year, which will be played on November 28, I believe.

Mr. President, we owe much to those brave individuals who have fought in Southeast Asia. Many of them are missing in action. Many of them are believed to be prisoners of war of the North Vietnamese and their allies.

We should do this for many reasons. There will be a vast crowd at this football game, but through the various media, millions of people will be participating. It will be an opportunity for millions of Americans to pause and show their respect and appreciation for these brave individuals, and our concern for them and their families, and also it will be an occasion for us to do what we can to mobilize world public opinion that these men receive justice and that the treaties be observed.

Mr. President, there are many wives, mothers and fathers, and loved ones of these men who have carried on most bravely. They have pursued every avenue to present their case to the world. One such wife, Mrs. Clifton Cushman of

Omaha, Nebr., originated this project, which was initiated by observances at the University of Nebraska at Omaha. It was her suggestion that it be carried to Washington, and that, at the traditional football contest between the Army and the Navy, we set the pace for the entire country of mobilizing the fans of our athletic events in this cause of serving these missing men and prisoners of war and their loved ones.

Mr. STENNIS. Mr. President, will the Senator yield briefly?

Mr. CURTIS. I yield.

Mr. STENNIS. Mr. President, I commend the Senator from Nebraska highly for his originality, his thoughtfulness, and his great sincerity in getting this resolution together, and thinking it through.

Mr. CURTIS. Does the Senator wish to be a cosponsor?

Mr. STENNIS. I would be delighted, of course. I think it is a very timely way to present the thought that he has in mind, and I hope he will prepare the proper preliminary notices about it.

Mr. CURTIS. I thank the distinguished Senator. I might call to the attention of the Senate that the resolution itself calls upon the Secretary of the Senate to notify the Secretaries of the Army and the Navy, to the end that its provisions may be carried out. I also wish to report that I have been in communication with the Secretary of Defense, Mr. Laird, and he is wholeheartedly in support of the matter.

I ask unanimous consent that the name of the distinguished Senator from Mississippi (Mr. STENNIS) be added as a cosponsor.

Mr. STENNIS. I thank the Senator though that was not my purpose in speaking.

Mr. CURTIS. Also the Senator from Indiana (Mr. BAYH).

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

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

Mr. CURTIS. Also the Senator from New Jersey (Mr. CASE) and the Senator from Kentucky (Mr. COOK).

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

Mr. CURTIS. I yield to the Senator from Kentucky.

Mr. COOK. Mr. President, I congratulate the Senator from Nebraska, because I am not sure there is another occasion when there will be more than 100,000 people in attendance and many millions who will watch it by way of television.

Second, I congratulate him because I think the time has come when the people of this country and the world should realize what this country is willing to do for its prisoners of war now being held by the North Vietnamese; because, as the Senator will recall, the President in his remarks the other night stated emphatically that we and the countries who are our allies in Southeast Asia wish to make an agreement immediately for the release of all prisoners of war.

I believe it is appropriate to state for the record at this point that the prisoners of war who are held by the South Vietnamese and ourselves number somewhere in the vicinity of 30,000, and those being held by the North Vietnamese number somewhere in the vicinity of 2,000. I suggest this is a good way to show the people of the world and of this country how highly we value the lives of our prisoners, that we would ask for the release of 2,000 and be willing to release 30,000 in exchange.

Mr. CURTIS. I thank the distinguished Senator. I call attention to the fact that there will be millions of people listening to this game on the radio and watching it on television, and that no doubt the armed services worldwide radio program will carry the game, either delayed or otherwise, and it is my hope that perhaps some of the very men about whom we are so concerned will somehow pick the program up when it is broadcast.

I yield to the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, I join my fellow Senators in paying respect to the Senator from Nebraska and congratulating him on this idea. Coming, as it does, right on the edge of Thanksgiving, there is no more appropriate time for those of us in this country to set aside to pay our respects to these men and to express to the world our opinion that something should be done to get them back home.

Mr. CURTIS. I thank the Senator.

Mr. President, I move the adoption of the resolution.

The PRESIDING OFFICER (Mr. DOLE). The question is on agreeing to the resolution.

The resolution was agreed to.

ELMER M. GRADE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1313, H.R. 6114.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 6114) for the relief of Elmer M. Grade.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment, on page 2, after line 7, to insert a new section, as follows:

SEC. 3. Section 4 of Public Law 89–777 (80 Stat. 1356 et seq.), as amended by Public Law 90–435 (82 Stat. 449), is further amended by changing the first sentence of the language of that section which amends subsection 5(b) of the Act of May 27, 1936 (49 Stat. 1384), to read: "After November 1, 1970, no passenger vessel of the United States of one hundred gross tons or over, having berth or stateroom accommodations for fifty or more passengers, shall be granted a certificate of inspection by the Coast Guard unless the vessel is constructed of fire retardant material, except that this requirement shall not apply until November 1, 1973, with respect to a vessel operating solely on the inland rivers.".

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 for the relief of Elmer M. Grade, and for other purposes.".

Mr. COOK. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1295), explaining the purposes of the measure.

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

PURPOSE OF AMENDMENTS

The purpose of the first amendment is to extend for a period of 3 years the exemptions from marine safety standards as to a vessel operating solely on the inland rivers.

The second amendment is self-explanatory in that it changes the title to reflect the amendment.

PURPOSE

The purpose of the bill as amended is to pay Elmer M. Grade, of Annandale, Va., $900 in full settlement of his claims against the United States for reimbursement of expenses arising in connection with sale of his Denver, Colo., residence pursuant to his change of official station as an employee of the U.S. Department of Labor. The bill also extends timewise certain inland marine safety standards.

STATEMENT

The facts of the claim part of the bill contained in House Report 91–1550 are as follows:

"The Department of Labor in its report to the committee on the bill noted that Mr. Grade was misinformed by Labor Department personnel and stated that it favors the bill with a reduction of the amount to $900 as provided in the committee amendment.

"As is outlined in the report of the Department of Labor, Mr. Grade's claim consists of $900 for realty commission paid in connection with the sale of his residence, which would have been reimbursable had the sale and settlement been accomplished within 1 year of the change of official station, and $100 for title search, which would not have been reimbursable. The Department suggests an amendment of the bill to reduce the amount so as to delete the latter and the committee has recommended that amendment.

"Section 4.1d of Bureau of the Budget Circular A–56, as revised October 12, 1966, imposed a limitation of 1 year within which reimbursement could be obtained by a Federal employee for duty at a new official station. Section 1.3d of the same Budget Bureau circular permitted reimbursement of travel expenses which were paid within 2 years of the same change of official duty station.

"Mr. Grade reported for duty at his new official station on January 14, 1967. The settlement date on the sale of his residence in Denver was August 1, 1968, more than 1 year after he reported for duty. Mr. Grade was informed by personnel of the Department that a 2-year time period was applicable to the payment of these expenses.

"In indicating a favorable position on the amended bill, the Labor Department report stated:

" 'In view of the misunderstanding by this Department and Mr. Grade of the time within which Mr. Grade could be reimbursed for the expenses incurred in purchasing a new home after a permanent change of official station, I favor H.R. 6114 as the only means of correcting a misunderstanding which has resulted in hardship for Mr. Grade' "

The bill also allows time for a vessel on the inland waterways to build and construct a replica vessel which would conform to the safety standards under existing protective legislation. The extension of time for new construction and/or conversion of the existing vessel creates no hazards as the vessel never operates beyond the safe reach of a riverbank.

In agreement with the House report and the reasons set out for the amendment the committee recommends the bill favorably.

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 in order to expedite the business of the Senate.

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS AND FOR THE CONSIDERATION OF THE UNFINISHED BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that upon the conclusion of the remarks by the Senator from Ohio (Mr. YOUNG) tomorrow, concerning which a special order for recognition has already been granted, there be a period for the transaction of routine morning business of not to exceed 10 minutes, and that at the conclusion of the period for the transaction of routine morning business, the unfinished business be laid before the Senate, and that debate on the pending amendment offered by the Senator from North Carolina (Mr. ERVIN) be limited to 10 minutes, the time to be equally divided and controlled by the Senator from North Carolina, the author of the amendment, and the manager of the resolution (Mr. BAYH); and that at the conclusion of the period of 10 minutes, the vote on the amendment, on which the yeas and nays have already been ordered, shall occur.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLAND. Mr. President, reserving the right to object, and I shall not object, will the Senator yield to me to make a parliamentary inquiry of the Presiding Officer?

Mr. BYRD of West Virginia. Yes, I yield for that purpose.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. HOLLAND. Of course, Mr. President, I have no objection at all to the consideration of the pending amendment exempting women from compulsory military service. I cannot understand how any Senator would object to such an exemption. But I want to be very sure that the adoption of that amendment does not preclude the offering of further substitutes relating to the exemption of values that are economic, that have to do with the holding and transfer of property, with labor and working conditions, or with the privacy of women. My parliamentary inquiry is this: If this proposed amendment were agreed to, is there still the right of any Senator to offer a substitute amendment which goes farther than that, and affects these other privileges of women to which I have referred?

The PRESIDING OFFICER (Mr. DOLE). The pending amendment is in the nature of a substitute, and would preclude any further amendments.

Mr. HOLLAND. Would preclude?

The PRESIDING OFFICER. Would preclude any further amendments.

Mr. BAYH. Mr. President, if the Senator will yield——

Mr. HOLLAND. Mr. President, my own feeling is that there will be no objection at all to passing upon this amendment if it be possible by amendment to the substitute amendment after it was adopted, to add these other features in the event a majority of the Members of the Senate chose to do so. I have been privately advised by the Parliamentarian that there would be no objection whatever from the parliamentary standpoint to the offering of the further amendments to which I have referred, and that is the reason why I am asking for a formal parliamentary ruling at this time.

Mr. BAYH. Mr. President, will the Senator yield for a word of explanation?

Mr. BYRD of West Virginia. I yield for that purpose.

The PRESIDING OFFICER. The Chair should like to respond to the Senator from Florida. The amendment discussed with the Parliamentarian is not the amendment that is now pending, the Chair is advised by the Parliamentarian. Therefore, a further amendment would be precluded.

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

Mr. BYRD of West Virginia. I yield.

Mr. ERVIN. In order not to preclude anyone, and to make it doubly certain, I ask unanimous consent that I may be permitted to modify my amendment so as to provide that it amends House Joint Resolution 264 in these three respects:

First, by inserting the words "within 7 years" between the word "ratified" and the word "by" on line 6 of House Joint Resolution 264.

Second, by inserting a second sentence in section 1, at the end of section 1, after the word "legislation":

> This article shall not impair, however, the validity of any law of the United States which exempts women from compulsory military service.

Third, by inserting on line 6, section 3, of House Joint Resolution 264 the words "two years" in place of "one year".

The PRESIDING OFFICER. Is there objection?

Mr. HOLLAND. Mr. President, the Senator from Florida has always understood that perfecting amendments do not, of course, preclude further perfecting amendments. But the Senator from Florida has understood that a substitute, when once adopted, does preclude further amendments, and that it would be imperative that those further amendments be offered to a substitute amendment while it is pending.

The Senator from Florida is completely in accord with his friend, the distinguished Senator from North Carolina, that women should be exempted from compulsory military service, but he has just as strong conviction that there are other exemptions which need to apply. For example, in my State, the right of married women to convey their own property without joinder of their husbands would be taken away from them, because a married man may not convey away his property without joinder by his wife, or else there is left unconveyed the dower interest in right. I could cite other instances which I am not able to cite today because of the condition of my throat.

I just want to make certain that these amendments are in the nature of perfecting amendments and not as a substitute amendment, because I fear that, if adopted as a substitute, further amendments might be precluded. That is the purpose of my parliamentary inquiry.

The PRESIDING OFFICER. Is the Senator from North Carolina changing his amendment in the nature of a substitute to a perfecting amendment?

Mr. ERVIN. Yes. I should like to change my amendment to read as follows:

> Amendment intended to be proposed by Mr. ERVIN to H.J. Res. 264, joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women:
>
> (1) On page 1, line 6, insert the words "within seven years" between the word "ratified" and the word "by".
>
> (2) On page 2, line 2, add a sentence reading as follows: "This article shall not impair, however, the validity of any law of the United States which exempts women from compulsory military service."
>
> (3) On page 2, line 6, strike out the words "one year" and insert in lieu thereof the words "two years".

I ask unanimous consent that my amendment be modified accordingly.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLAND. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. BYRD of West Virginia. I yield for that purpose.

Mr. HOLLAND. As I understand it, as so offered now by my distinguished friend, the Senator from North Carolina, the former request for a substitute amendment, or the former offering amendment of a substitute amendment has been changed, and instead the Senator from North Carolina is asking for three perfecting amendments. Am I correct?

The PRESIDING OFFICER. That is the understanding of the Chair. The Senator is correct. It is now in the nature of a perfecting amendment, rather than a substitute.

Mr. HOLLAND. I should like to ask one additional parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HOLLAND. Assuming the adoption of one or all of these perfecting amendments, the amendment would still be subject to amendment, if I correctly understand the parliamentary proceeding. Am I correct?

The PRESIDING OFFICER. The Senator is correct. The resolution would be subject to further amendment.

Mr. HOLLAND. I have no objection to the unanimous-consent request.

The PRESIDING OFFICER. Without objection, the Senator from North Carolina can so modify his amendment.

Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The unanimous-consent request, subsequently reduced to writing, is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That the Senate proceed to the further consideration of the amendment (No. 1049) by the Senator from North Carolina (Mr. ERVIN), as modified, to H.J. Res. 264, proposing an amendment to the Constitution of the United States relative to equal rights for men and women, after the conclusion of routine morning business on Tuesday, October 13, 1970 with debate to be limited to 10 minutes, to be equally divided and controlled by Mr. ERVIN and the Senator from Indiana (Mr. BAYH), after which the Senate will proceed to vote thereon.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the amendment as modified by the able Senator from North Carolina be printed and distributed on the desks of Senators in the morning, and that it also be printed in the RECORD.

Without objection, it is so ordered.

AMENDMENT NO. 1049

The modified amendment of the Senator from North Carolina (Mr. ERVIN) is as follows:

Amendment intended to be proposed by Mr. ERVIN to H.J. Res. 264, joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women:

(1) On page 1, line 6, insert the words "within seven years" between the word "ratified" and the word "by".

(2) On page 2, line 2, add a sentence reading as follows: "This article shall not impair, however, the validity of any law of the United States which exempts women from compulsory military service."

(3) On page 2, line 6, strike out the words "one year" and insert in lieu thereof the words "two years".

Mr. BAYH. Mr. President, will the Senator recount the exact terminology of the unanimous-consent request, so that we will all be able to plan and advise others how to plan their schedules on tomorrow?

Mr. BYRD of West Virginia. Mr. President, I shall restate the request, not in the nature of a unanimous-consent request, but just for the purpose of the RECORD.

The Senate will adjourn at the close of business today, under the previous order, until 10 o'clock tomorrow morning. Following the disposition of the reading of the Journal and the disposition of any unobjected to items on the Legislative Calendar, the able Senator from Ohio (Mr. YOUNG) will be recognized for not to exceed 15 minutes.

Following the remarks of the able Senator from Ohio (Mr. YOUNG), there will be a period for the transaction of routine morning business, not to exceed 10 minutes; and I ask unanimous consent that statements therein be limited to 3 minutes.

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

Mr. BYRD of West Virginia. Mr. President, at the conclusion of the period for the conduct of routine morning business on tomorrow, the unfinished business will be laid before the Senate but the time will be given over to consideration of the amendments as modified, of the Senator from North Carolina, for 10 minutes, with the time to be equally divided and controlled between the Senator from North Carolina (Mr. ERVIN) and the Senator from Indiana (Mr. BAYH). At the conclusion of the aforementioned 10 minutes, the vote will be taken on the amendments as modified by the Senator from North Carolina, and it will be a roll-call vote.

Mr. HOLLAND. Mr. President, I think one more step is necessary, if the Senator will yield, in that I suggest to the Senator from North Carolina that he might request his three amendments be considered en bloc.

Mr. ERVIN. Yes; Mr. President, I so request.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

Mr. BYRD of West Virginia. Mr. President, this would mean, therefore, that the vote on the pending amendments, as modified, would occur somewhere in the in the neighborhood of 10:40 a.m., to 10:45 a.m., tomorrow.

ORDER FOR RECOGNITION OF SENATOR McCLELLAN TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, upon completion of the vote tomorrow on the pending amendments, as modified, of the able Senator from North Carolina, the able Senator from Arkansas (Mr. MCCLELLAN) be recognized for not to exceed 30 minutes, for the purpose of introducing a resolution; and I ask unanimous consent now for its immediate consideration at that time.

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

STATUS OF UNFINISHED BUSINESS

Mr. BYRD of West Virginia. Now, Mr. President, I ask unanimous consent that, at the conclusion of the special order tomorrow for the recognition of the Senator from Arkansas (Mr. MCCLELLAN) and action by the Senate on the resolution to be introduced by him at that time, the unfinished business be temporarily laid aside and that it remain in that status until the conclusion of morning business on Wednesday next, and that the Senate then proceed on tomorrow to the immediate consideration of Calendar No. 1300, S. 2193, the so-called occupational health and safety bill.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. BAYH. Mr. President, I reserve the right to object, but I shall not object. I do not want to delay consideration of the other measures which the distinguished Senator from West Virginia has been diligently pursuing. However, I would like to observe that this will delay final action on this important Equal Rights Amendment.

I do hope that we will soon come to a vote on the merits.

Mr. GRIFFIN. Mr. President, reserving the right to object, as I indicated earlier to the distinguished acting majority leader, I must interpose an objection on behalf of other Senators who are very interested in this legislation and who consider it highly controversial. They want to be sure there is adequate time for debate. So, in my leadership capacity, I am not able at this time to agree with the unanimous-consent request.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD of West Virginia. Mr. President, I understand and I respect the Senator's reasons for objecting. I take it, however, that this does not rule out the possibility of some resolution of the matter on tomorrow?

Mr. GRIFFIN. I think that is possible. I shall be glad to speak to the Senators who have spoken to me, to see if something can be worked out.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD of West Virginia. I yield.

Mr. WILLIAMS of New Jersey. I have been designated as manager of the bill on occupational health and safety and I certainly hope that the objection interposed by the Senator from Michigan can be worked out so that this bill can be dealt with tomorrow before we adjourn.

The urgency of this matter could not have been more strongly stated than by the President of the United States, who has sent us three messages on the need for occupational health and safety legislation. His most recent message, in September, stated that, "It does not exaggerate to declare that such a program should have become Federal law three generations ago."

It has been generally known that this legislation would be before us today. When I arrived here this morning, it was with the recollection that an announcement had been made as far back as September 30, and again on Wednesday of last and Friday of last week, that the bill would be brought to the floor of the Senate today. So there has been an abundance of time and notice that this measure would be before us.

I certainly hope that the objection can be worked out and that we will recognize the urgency of the matter.

Mr. GRIFFIN. With all due respect to the Senator from New Jersey, of course, the pending business before the Senate is the Equal Rights for Women constitutional amendment; any deviation or departure from debate on that amendment, which is the pending business, can take place only by unanimous consent. Many women believe the Senate should continue its consideration of the equal rights amendment, and it is not surprising that there would be one Senator who would object to setting it aside. And, that is the case, although the objection is not this Senator.

Mr. WILLIAMS of New Jersey. I realize that the parliamentary situation makes it difficult or impossible without unanimous consent to bring the bill before the Senate. Also, I recognize that the President of the United States——

Mr. BYRD of West Virginia. If the Senator will permit me to interject there, it does not make it impossible, just difficult.

Mr. WILLIAMS of New Jersey. That is what I thought I just said.

Mr. BYRD of West Virginia. The Senator said "difficult or impossible."

Mr. WILLIAMS of New Jersey. The Senator is also aware that the leadership of the Senate is mindful of those measures that the President has indicated are essential to consideration by Congress. This is one of them.

Mr. GRIFFIN. Let me say to the Senator that, personally, I am very much disappointed since I wish the Senate would act on this important legislation; I hope it will not be too long before we can.

Mr. BYRD of West Virginia. In fairness to the acting minority leader, may I say that the Senator from West Virginia, who presently has the floor, asked unanimous consent on Friday afternoon last to proceed to the consideration of Calendar No. 1300 today, no later than the hour of 3 p.m. An objection was heard, but it did not come from the Senator from Michigan (Mr. GRIFFIN).

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

Mr. BYRD of West Virginia. I yield.

Mr. HANSEN. May I ask the distinguished acting majority leader what the prospects are for some action on the farm bill—the farm program? It is my understanding that the House will take action on the conference committee report tomorrow. I would be hopeful that we might yet consider that bill. Also, as the Senator knows, in the West, a number of our farmers out there have a farm planning program and they have to be getting on with that job now. It will be too late, I regret to say, if they are denied the knowledge of what will be contained in the new farm legislation until after November 14 or November 16.

I therefore wonder whether the distinguished acting majority leader might hazard an opinion as to possible action on the conference report on the farm program.

Mr. BYRD of West Virginia. Mr. President, in response to the able Senator's inquiry, there will not be any action by this body on the conference report to which the Senator has alluded, until the Senate returns in November following the adjournment.

Mr. HANSEN. I do appreciate the fact that the Senate is subject to many disappointments. For some 6 weeks we debated the Church amendment. My understanding now is that the House conferees refused even further to consider this legislation; am I right about that?

Mr. BYRD of West Virginia. Mr. President, I cannot answer the Senator's question.

Mr. HANSEN. Mr. President, I thank the distinguished Senator.

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

Mr. BYRD of West Virginia. Mr. President, I yield to the Senator from Rhode Island.

Mr. PELL. Mr. President, I would like to make the observation, not as floor manager, but as a Member of the Subcommittee Committee on Labor working under the able leadership of the floor leader and chairman of the Labor Subcommittee, the Senator from New Jersey, that I am following this bill with as much attention as I can. The occupational health safety bill is a complicated and controversial bill.

I know that the Senator from Michigan is for the objectives of the bill. I say this with all respect to the particularly able and well-informed Senator from Michigan. But, it is a question of belling the cat. I believe that the objections that have been raised in the committee and in the subcommittee and on the floor have been raised in general on the Republican side.

While I feel that I must make this observation, it is no reflection on the able acting minority leader.

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

Mr. BYRD of West Virginia. Mr. President, I yield to the distinguished Senator from Florida.

Mr. HOLLAND. Mr. President, the Senator from Florida was exceedingly regretful to hear his friend, the Senator from West Virginia, say that there would be no action on the conference report on the farm bill until after our return. I was regretful for many reasons. However, one reason may be more acutely on the mind of the Senator from Florida than any other reason. Our agricultural appropriation bill has been awaiting conference since July 6. It may not even go to conference until after the farm bill has been approved, meaning until after action has been taken on the conference.

However, the Senator from West Virginia has stated exactly what the majority leader—who has been called away today on business—stated to the Senator from Florida.

The Senator from Florida wants to make it very clear that he regrets that action and has good ground for so regreting it, because it will further hold up even the opportunity to have a conference on the agricultural appropriation bill which we have been so delayed on. The principal reason, of course, for the delay has been the long delay in getting the farm bill.

The Senator from Florida wanted to make very clear that that announcement, while in strict accord with what the majority leader has told the Senator from Florida, still occasions him great regret.

Mr. BYRD of West Virginia. Mr. President, the concern of the able Senator from Florida is appreciated. I state my gratitude for his understanding and cooperation.

Mr. President, I shall not renew my request for unanimous consent with respect to the occupational health and safety legislation today. I recognize that Senators who have objected have acted entirely within their rights.

I hope that on tomorrow when the distinguished majority leader has returned, it may be possible to resolve this matter in such a way that the Senate can proceed to take action at that time.

Mr. GRIFFIN. Mr. President, will the Senator yield for a brief comment?

Mr. BYRD of West Virginia. Mr. President, I yield to the distinguished Senator from Michigan.

Mr. GRIFFIN. Mr. President, I was trying to restrain myself. However, in view of the fact that the comment of the Senator from Rhode Island had a slight partisan ring to it, I must state that I am very concerned and interested in obtaining enactment of the President's proposed legislation. However, I wonder if the Senator from Rhode Island supports the President's recommended legislation or does he support a different measure with a similar title?

Mr. PELL. Mr. President, we support a somewhat different bill, but with the same objectives and the same title. However, we think that a vote should be had on the matter as quickly as possible.

Mr. GRIFFIN. Mr. President, I thank the Senator.

DESIGNATION OF JANUARY AS "NATIONAL BLOOD DONOR MONTH"

Mr. BYRD of West Virginia. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on Senate Joint Resolution 223.

The PRESIDING OFFICER (Mr. DOLE) laid before the Senate the amendments of the House of Representatives to the joint resolution (S.J. Res. 223) to authorize and request the President to issue annually a proclamation designating the month of January of each year as "National Blood Donor Month" which were:

Line 5, strike out "annually".

Line 6, strike out "of each year" and insert "1971".

Amend the title so as to read: "Joint resolution to authorize and request the President to issue a proclamation designating January 1971 as 'National Blood Donor Month'."

Mr. BYRD of West Virginia. Mr. President, I move that the Senate concur in the amendments of the House.

The motion was agreed to.

TURNING OVER A NEW LEAF IN CENTRAL EUROPE

Mr. PELL. Mr. President, on August 12 of this year a treaty was signed in Moscow by Chancellor Brandt of the Federal Republic of Germany and Premier Kosygin of the Soviet Union. The text of the treaty is brief and clear. The prefatory paragraphs refer to the favorable conditions for the development and strengthening of mutual relations and the determination of the two governments to improve and extend economic relations as well as scientific, technological, and cultural contacts. The treaty then goes on to state that the two governments will settle their disputes by peaceful means and will refrain from the threat or use of force and that they regard the frontiers of Europe, as they existed on the date the treaty was signed, as inviolable, "including the Oder-Neisse line which forms the western frontier of the People's Republic of Poland and the frontier between the Federal Republic of Germany and the German Democratic Republic." Accompanying the treaty was a letter from the West German Foreign Minister to his Soviet counterpart stating that the West German Government considers that the treaty does not conflict with the objectives of "a state of peace in Europe in which the German nation will recover its unity in free self-determination."

After signing the treaty, Chancellor Brandt, in a message from Moscow to the West German people, said:

The treaty endangers nothing and no one. It should help to open a path forward. And

if it does this, then it will serve peace, Europe, and all of us.

Let us hope that the treaty will open a path forward to peace, laying the groundwork for concessions by both parties that will serve to ameliorate, and perhaps in time eliminate, the dangers inherent in the situation that has existed in the center of Europe since the end of the war.

Almost 10 years ago, I advocated on the Senate floor that the Oder-Neisse line be accepted as the western frontier of Poland and that the continuing existence of two German governments be acknowledged on condition that the rights of land access to Berlin be clearly defined in a written agreement so that we would no longer be faced with periodic Berlin crises which have far too frequently raised the national temperature to an uncomfortable, and in some cases dangerous level. That proposal seems now close to becoming a fact. But, it is not yet a fact. The treaty accepting the Oder-Neisse line as the western frontier of Poland and accepting the present boundaries of the two Germanies has been signed. It has, however, not been ratified. In this regard, I believe the West German Government is absolutely correct in stating that it does not intend to ratify the treaty until a satisfactory solution is reached with regard to Berlin. That solution, it has been explained, would include agreement on land access to West Berlin, on the liberalization of travel and communication between East and West Berlin and on West Berlin's economic, financial, legal, and cultural ties with the Federal Republic of Germany.

I believe that it is not just desirable, but vital, that agreement be obtained on these questions before the treaty is ratified. These matters are among those being discussed by the American, French, British, and Soviet Ambassadors in Germany in the course of their talks on Berlin; talks which resumed on September 30. I believe, too, that it is essential that these agreements be in the form of contractual Soviet and East German guarantees. East German unilateral concessions or verbal agreements by the Soviet Union could always be subsequently repudiated or interpreted differently by the parties concerned and should not be considered sufficient. Soviet actions recently in the Middle East are painful reminders of the risks involved, although some degree of risk is inevitable. The objective should be to reduce that degree of risk to the minimum possible.

I trust that the executive branch will keep the Committee on Foreign Relations informed about the progress of these talks on Berlin

Once these Berlin problems have been resolved, and the West German-Soviet treaty ratified, then the way may be open for the admission of both West Germany and East Germany to the United Nations and to regular recognition of East Germany. The new agreements on Berlin, and the ratification of the Soviet-West Germany treaty, could also open the way for a European security conference, for talks between NATO and the Warsaw Pact on mutual balanced force reductions and for West German nonaggression and friendship treaties with Poland and Czechoslovakia.

Only then when there has been reduction of tension and detente in Central Europe, particularly between both Germanies, can there be any serious discussion and movement leading to German reunification.

Thus, 25 years after the end of the war, the two parts of Europe seems to be on the point of taking a large step toward each other. Chancellor Brandt noted in his broadcast to Germany after signing the treaty with the Soviet Union:

> Europe ends neither on the Elbe nor on the Polish eastern frontier. Russia is indissolubly bound up in the history of Europe, not only as an opponent and a peril, but also as a partner—historically, politically, culturally and economically.

He added:

> We have have the courage to turn over a new leaf at this point.

After 25 years, surely it is time for a new leaf.

STATUS OF HOUSE JOINT RESOLUTION 264

Mr. BYRD of West Virginia. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BYRD of West Virginia. Mr. President, for the record, upon the conclusion of the 30 minutes which have been granted under the special order for recognition of and action on the resolution to be offered by the Senator from Arkansas (Mr. McCLELLAN) tomorrow, am I correct in understanding that the unfinished business, House Joint Resolution 264, will be the business before the Senate?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD of West Virginia. I thank the able Presiding Officer.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

VETO MESSAGE—S. 3637

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the veto message on S. 3637 be held temporarily at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object—no objection.

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

The message from the President is as follows:

To the Senate of the United States:

I return herewith, without my approval, S. 3637, a bill to revise the provisions of the Communications Act which relate to political broadcasting.

This legislation is aimed at the highly laudable and widely supported goals of controlling political campaign expenditures and preventing one candidate from having an unfair advantage over another. Its fatal deficiency is that it not only falls far short of achieving these goals but also threatens to make matters worse.

S. 3637 does not limit the overall cost of campaigning. It merely limits the amount that candidates can spend on radio and television. In doing so, it unfairly endangers freedom of discussion, discriminates against the broadcast media, favors the incumbent officeholder over the officeseeker and gives an unfair advantage to the famous. It raises the prospect of more—rather than less—campaign spending. It would be difficult, in many instances impossible, to enforce and would tend to penalize most those who conscientiously attempt to abide by the law.

The problem with campaign spending is not radio and television; the problem is spending. This bill plugs only one hole in a sieve.

Candidates who had and wanted to spend large sums of money, could and would simply shift their advertising out of radio and television into other media—magazines, newspapers, billboards, pamphlets, and direct mail. There would be no restriction on the amount they could spend in these media.

Hence, nothing in this bill would mean less campaign spending.

In fact, the bill might tend to increase rather than decrease the total amount that candidates spend in their campaigns. It is a fact of political life that in many Congressional districts and States a candidate can reach more voters per dollar through radio and TV than any other means of communication. Severely limiting the use of TV and radio in these areas would only force the candidate to spend more by requiring him to use more expensive techniques.

By restricting the amount of time a candidate can obtain on television and radio, this legislation would severely limit the ability of many candidates to get their message to the greatest number of the electorate. The people deserve to know more, not less, about the candidates and where they stand.

There are other discriminatory features in this legislation. It limits the amount of money candidates for a major elective office may spend for broadcasting in general elections to 7¢ per vote cast for the office in question in the last election or $20,000 whichever is greater. This formula was arrived at through legislative compromise and is not based on any scientific analysis of broadcast markets. It fails to take into account the differing campaign expenditure requirements of candidates in various broadcast areas. In many urban centers, the $20,000 limitation would permit a congressional candidate to purchase only a few minutes of broadcast time, thus precluding the use of radio or television as an effective instrument of communication. On the other hand, $20,000 spent on television broadcasting in another district would enable a candidate to virtually blanket a large area with campaign advertising spots. For example, 30 seconds of prime television time in New York City costs $3,500; in the Wichita-Hutchinson, Kansas, area it costs $145.

S. 3637 raises a host of other questions of both principle and practice. It would require that broadcasters charge candidates no more than the lowest unit charge of the station for comparable time. This is tantamount to rate-setting by statute and represents a radical departure for the Congress which has traditionally abhorred any attempt to establish rates by legislation.

Among the other questions raised and left unanswered are these: How would expenditures of various individuals and organizations not directly connected with the candidate be charged? Would they be considered part of a candidate's allowed total expenditure, even if they were beyond the candidate's control? And how would money spent by a committee opposing a candidate be accounted? Would it be included in the total for that candidate's opponent, even though spent without his consent or control? This bill does not effectively limit the purchase of television time to oppose a candidate.

In the end, enforcement of the expenditure limitation would in most cases occur after the election. This raises the possibility of confusion and chaos as elections come to be challenged for violation of S. 3637 and the cases are still unresolved when the day arrives on which the winning candidate should take office.

There is another issue here which is perhaps the most important of all. An honored part of the American political tradition is that any little known but highly qualified citizen has the opportunity to seek and ultimately win elective office. This bill would strike a serious blow at that tradition. The incumbent—because he has a natural avenue of public attention through the news media in the conduct of his office—would have an immeasurable advantage over the "out" who was trying to get in. The only others who would share part of this advantage would be those whose names were well-known for some other reason.

What we have in S. 3637 is a good aim, gone amiss. Nearly everyone who is active or interested in the political process wants to find some way to limit the crushing and growing cost of political campaigning. But this legislation is worse than no answer to the problem—it is a wrong answer.

I urge that the Congress continue to analyze and consider ways to reach this goal through legislation which will not restrict freedom of discussion, will not discriminate against any communications medium, will not tend to freeze incumbents in office, will not favor the famed over the worthy but little-known, will not risk confusion and chaos in our election process and will not promote more rather than less campaign spending. Such legislation will have to be far better than S. 3637.

I am as opposed to big spending in campaigns as I am to big spending in government. But before we tamper with something as fundamental as the electoral process, we must be certain that we never give the celebrity an advantage over an unknown, or the officeholder an extra advantage over the challenger.

RICHARD NIXON.

THE WHITE HOUSE, *October 12, 1970.*

ADJOURNMENT TO 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 4 o'clock and 21 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, October 13, 1970, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 12, 1970:

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

The following-named persons to be members of the U.S. Advisory Commission on International Educational and Cultural Affairs for terms expiring May 11, 1973:

Dr. Homer Daniels Babbidge, Jr., of Connecticut.

Dr. Martha B. Lucas Pate, of Connecticut.

CALIFORNIA DEBRIS COMMISSION

Col. James C. Donovan, Corps of Engineers, to be a member of the California Debris Commission, under the provisions of section 1 of the act of Congress approved March 1, 1893 (27 Stat. 507) (33 U.S.C. 661), vice (P) Col. George B. Fink, Corps of Engineers; reassigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 12, 1970:

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

DeWitt S. Hyde, of Maryland, to be an associate judge of the District of Columbia court of general sessions, for the term of years prescribed by Public Law 91–358, approved July 29, 1970.

Dyer Justice Taylor, of Virginia, to be an associate judge, District of Columbia court of general sessions, for term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970.

Normalie Holloway Johnson, of Washington, D.C., to be an associate judge, District of Columbia court of general sessions, for the term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970.

Leonard Braman, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970.

Paul F. Mc Ardle, of Maryland, to be an associate judge of the District of Columbia court of general sessions, for the term of 15 years, as prescribed by Public Law 91–358, approved July 29, 1970.

Sylvia A. Bacon, of the District of Columbia, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

John F. Doyle, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

Eugene N. Hamilton, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

Stanley S. Harris, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

Theodore R. Newman, Jr., of the District of Columbia, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

Nicholas S. Nunzio, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

John G. Penn, of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

George H. Revercomb, of Virginia, to be associate judge, District of Columbia court of general sessions, for the term of 15 years.

William E. Stewart, Jr., of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of 15 years.

James A. Washington, Jr., of Maryland, to be an associate judge, District of Columbia court of general sessions, for the term of years prescribed by Public Law 91–358, approved July 29, 1970.

EXTENSIONS OF REMARKS

VFW NATIONAL LEGISLATIVE COMMITTEE ACTS

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 12, 1970

Mr. TEAGUE of Texas. Mr. Speaker, on September 28 and 29, 1970, the National Legislative Committee of the Veterans of Foreign Wars of the United States met here in Washington. This key committee of the 1,600,000-member veterans organization drew veterans leaders from throughout the Nation to review scores of resolutions approved by delegates to the Miami Beach, Fla., convention last August. It was during this convention that the more than 13,000 delegates elected Herbert R. Rainwater of San Bernardino, Calif., as their national commander in chief.

This VFW leader, known to his friends and comrades as Chief Rainwater, has a long and enviable record of service to our country and to those who have taken up arms in defense. Chief Rainwater has been in office now a little over a month and is currently on a worldwide factfinding trip that will take him into more than 15 countries. One of his major goals is seeking the release of American prisoners of war being held captive by Communist forces. With him go our blessings and a prayer that the 3 million signatures on petitions for the POW's release compiled by members of the VFW will impress the Communist leaders with the concern of Americans everywhere for those being held in captivity under inhuman conditions.

There can be little doubt from this that the VFW will be an even better organization under his dynamic leadership during the year ahead. Shortly before he left for overseas, Rainwater appointed members to the legislation committee.